

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

Present:

**THE HON'BLE JUSTICE SUJOY PAUL
&
THE HON'BLE JUSTICE SMITA DAS DE**

**WPA (P) 328 of 2022
CAN 1 of 2022
CAN 2 of 2022**

**Saifuddin Purkait & Ors.
Vs.
State of West Bengal & Ors.**

Appearance:

For the Petitioners	: Mr. Pankaj Halder, Adv. Mr. Neelabha Bera, Adv.
For the State	: Mr. Jahar Lal De, A.G.P. Mr. Rudranil De, Adv.
For the Respondent no. 4	: Mr. Ashoke Kumar Banerjee, Ld. Sr. Adv. Mr. S.R. Saha, Adv.
Heard On	: 28.08.2025
Judgment On	: 02.09.2025

Sujoy Paul, J.:

1. In this public interest litigation, the petitioners have prayed for following relief:

“Under the above facts and circumstances, it is prayed that your Lordship may be graciously pleased to issue:-

- a) A writ and/or Writs commanding the respondent concerned, their agent, men, sub-ordinates and each of them to set aside the purported selection process for the post of Data Entry Operator, Consultant, Junior Consultant etc. in different Office like, Districts, Sub-Division, Block and/or Panchayet, Library offices and others

department throughout the State of West Bengal in Bangla Sahayata Kendra in 2020, 2021 and 2022 and further more to direct the Recruitment Agency to initiate fresh recruitment process in accordance with law forthwith.

- b) Writ and/or Writs commanding the respondent concerned, their agent, men, sub-ordinates and each of them not to issue any further appointment letter on the basis of the said purported selection process for the post of Data Entry Operator Consultant, Junior Consultant etc. in different office like Districts, Sub-Division, Block and/or Panchayet, Library offices forthwith.
 - c) Writ and/or Writs in the nature of Certiorary directing the Respondent concerned to produce all relevant documents concerning entire selection process for the post of Data Entry Operator, Consultant, Junior Consultant etc. in different Office like, Districts, Sub-Division, Block and/or Panchayet, Library offices forthwith.
 - d) Rule NISI in terms of the prayers (a), (b) and (c) herein above.
 - e) An interim order or injunction restraining the Recruitment Agency/WEBEL not take any further steps for filing up notified vacancy of Data Entry Operator, Consultant, Junior Consultant in different Office of Districts, Sub-Division, Block and/or Panchayet, Library offices and others department throughout the State of West Bengal in Bangla Sahayata Kendra pursuant to the purported notifications published in Electronic Media in 2022 forthwith.
 - f) Any other of further writ or writs order or orders, direction or directions as your Lordship may deem fit and proper.
- And for this your, petitioners as in duty bound shall ever pray.”

(Emphasis Supplied)

2. This matter was heard on the question of maintainability. The objection of maintainability is that the petitioners themselves submitted their candidature for the post of Data Entry Operator. They participated in the selection process but could not succeed in the same. Thereafter, they filed the present PIL. Since, they are persons interested, this PIL is not maintainable, although the persons interested can file and maintain a regular writ petition. The second objection is that after having participated in the selection process without any demur, it is no more open to the petitioners to assail the selection process after becoming unsuccessful. It is also strenuously argued by Mr. Jahar Lal De and Mr. Rudranil De that the petitioner has essentially filed this PIL in a ‘service matter’ which is not

maintainable. Reference is made in the case of ***K.H Siraj vs. High Court of Kerala & Ors., reported in (2006) 6 SCC 395, Holicow Pictures (Pvt.) Ltd. Vs. Prem Chandra Mishra & Ors. reported in (2007) 14 SCC 281 and HC Pradeep Kumar Rai vs. Dinesh Kumar Kumar Pandey, reported in 2015 AIR SCW 3348.***

3. Learned counsel for the petitioner urged that there is no suppression of fact on the part of the petitioner. In Para 8 of PIL, petitioners categorically pleaded that petitioners “applied for the post in question for the recruitment year 2021 but they do not know their fate of their application”. In addition, the applications dated 18.09.2021 (Page 39 and 40) were filed seeking indulgence to call them for interview. Thus, it is submitted that petitioner approached the Court with clean hands, clean mind and clean objective. In absence of any suppression of facts, the petition cannot be thrown to the winds.

4. Learned counsel for the petitioners placed reliance on an *inter locutory* order passed by the Division Bench in ***WPA (P) 203 of 2022 (Tapas Ghosh vs. State of West Bengal & Ors.)*** to submit that the Division Bench has already entertained a PIL in a ‘service matter’. In the said case, the objection of the Government was that matter relates to recruitment and PIL is not maintainable. The objection of delay in filing the PIL was also taken but in Para 24 and 25 of the said order, the said objections were not entertained.

5. The Full Bench judgment of the Supreme Court in ***Centre for PIL & Anr. vs. Union of India (UOI) & Anr. (2011) 4 SCC 1*** is relied upon to submit that the PIL is maintainable. This Full Bench judgment was followed by the Division Bench of Kerala High Court in ***Civic Responsibilities and***

Empowerment Association (CREA) vs. State of Kerala (2021) 2 SCT 263.

Lastly, reference is made to another Supreme Court judgment in the case of ***Krishna Rai (Dead) Through LRs & Ors. vs. Banaras Hindu University Through Registrar & Ors..*** In support of the argument that there has to be a suitable eligibility criteria which is duly laid down in the rules. Recruitment without following the ‘due process’ cannot sustain judicial scrutiny.

6. The parties confined their arguments to the extent indicated above.
7. We have heard the parties at length on the question of maintainability.
8. This is not in dispute that petitioners themselves were candidates in the selection of 2021. However, they added prayer for subsequent selections also in the prayer clause to give it a broader public interest colour. Since, petitioners themselves were admittedly candidates who could not be selected, challenge at their behest to the recruitment process is certainly has a character of a “service matter”. No doubt, an *inter locutory* order passed by the Division Bench on 12th July, 2022 in the case of ***Tapas Ghosh (supra)*** helps the petitioner to some extent. However, it is noteworthy that the judgment of Supreme Court in ***Duryodhan Sahu (Dr.) vs. Jitendra Kumar Mishra reported in (1998) 7 SCC 273*** has not been cited before the said Division Bench. The said judgment of Supreme Court was considered by subsequent Benches in catena of cases. In a judgment, this Calcutta High Court also followed the ratio *decidendi* of the judgment of ***Duryodhan Sahu (Dr.) (supra)*** and many other judgments. After considering the judgments of the Supreme Court and Calcutta High Court in WPA (P) 299 of 2025 decided on 14.08.2025, this Bench recently in WPA (P) 268 of 2024 decided on 19.08.2025 opined that the PIL in ‘service matter’ is not maintainable.

9. In order to appreciate the entire legal journey, we deem it proper to reproduce the relevant portion of the order passed in WPA (P) 268 of 2024 which reads as under:

2. The petitioner was heard on the question of maintainability of PIL. He submits that although in the case of ***Duryodhan Sahu (Dr.) vs. Jitendra Kumar Mishra reported in (1998) 7 SCC 273*** the Supreme Court opined that PIL is not maintainable in service matter but it is noteworthy that said matter was travelling from an original application filed before the Central Administrative Tribunal. In this backdrop, the said observation was given by the Supreme Court in ***Duryodhan Sahu (Dr.) (supra)***. Learned counsel for the State opposed the prayer and stated that PIL is not maintainable.
3. The point involved is no more *res integra*. This Court in WPA (P) 299 of 2025 decided on 14.08.2025 considered the entire legal journey on this aspect and recorded as under:

*“The Apex Court in ***Duryodhan Sahu (Dr.) vs. Jitendra Kumar Mishra (1998) 7 SCC 273*** opined that the PIL in service matters is not maintainable. The said judgment of the Supreme Court was consistently followed in ***Ashok Kumar Pandey v. State of W.B. (2004) 3 SCC 349***; ***B. Singh (Dr.) v. Union of India (2004) 3 SCC 363***; ***Gurpal Singh v. State of Punjab (2005) 5 SCC 136***; ***Kushum Lata v. Union of India (2006) 6 SCC 180***; ***Neetu v. State of Punjab (2007) 10 SCC 614***; ***Hari Bansh Lal v. Sahodar Prasad Mahto (2010) 9 SCC 655***; ***Grijesh Shrivastava v. State of M.P. (2010) 10 SCC 707***; ***Ayaaubkhan Noorkhan Pathan v. State of Maharashtra (2013) 4 SCC 465***, ***State of Punjab v. Salil Sabhlok (2013) 5 SCC 1***; ***Vishal Ashok Thorat v. Rajesh Shriramjbapu Fate (2020) 18 SCC 673*** and ***State of Jharkhand v. Shiv Shankar Sharma (2022) 19 SCC 626***.*

A Division Bench of Calcutta High Court considered some of aforesaid judgments in the case of ***Baidyanath Saha vs. Union of India & Ors. WPA (P) 92 of 2021*** decided on 11.04.2022 and opined as under:

*“2. Having examined the petition, we find that the petitioner has not disclosed his credentials except by stating that he has no direct pecuniary interest in the matter and that he is a socially committed law abiding citizen. It is the settled position of law that in service matters, PIL is not maintainable. The persons, if any, affected by the advertisement can always file the appropriate petition or approach the appropriate forum questioning the same. In the matter of *Girjesh Shrivastava and Others vs. State of Madhya Pradesh and Others reported in MANU/SC/0888/2010 : (2010) 10 SCC 707* where in a Public Interest Litigation, allegation of non-issuance of proper advertisement for reservation for ex-servicemen was made, the Hon’ble Supreme Court taking note of the legal position in*

respect of maintainability of the PIL in a service dispute had held that:

“14. However, the main argument by the appellants against entertaining WP (C) No. 1520 of 2001 and WP (C) No. 63 of 2002 is on the ground that a PIL in a service matter is not maintainable. This Court is of the opinion that there is considerable merit in that contention. It is common ground that dispute in this case is over selection and appointment which is a service matter.

15. In Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra a three-Judge Bench of this Court held that a PIL is not maintainable in service matters. This Court, speaking through Srinivasan, J. Explained the purpose of administrative tribunals created under Article 323-A in the backdrop of extraordinary jurisdiction of the High Courts under Articles 226 and 227. This Court held:

“18. If public interest litigations at the instance of strangers are allowed to be entertained by the [Administrative] Tribunal, the very object of speedy disposal of service matters would get defeated.”

Same reasoning applies here as a public interest litigation has been filed when the entire dispute relates to selection and appointment.

16. In B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees’ Assn. this Court held that in service matters only the non-appointees can assail the legality of the appointment procedure (see SCC p. 755, para 51 of the Report).

17. This view was very strongly expressed by this Court in Dattaraj Nathuji Thaware v. State of Maharashtra by pointing out that despite the decision in Duryodhan Sahu, PILs in service matters “continue unabated”. This Court opined that the High Courts should “throw out” such petitions in view of the decision in Duryodhan Sahu (SCC p. 596, para 16).

18. Same principles have been reiterated in Ashok Kumar Pandey v. State of W.B. (SCC at p. 358, para 16).

19. In a recent decision of this Court delivered on 30-8-2010, in Hari Bansh Lal v. Sahodar Prasad Mahto, it has been held that except in a case for a writ of “quo warranto”, PIL in a service matter is not maintainable (see SCC para 15).”

It has further been held that:

“29. Coming to the issue of selection and appointment of ex-servicemen as a reserved category, from what has been placed before us, we understand that while in Mehagaon 5 ex-servicemen had been appointed out of a total of 9 applicants, in Raun none had been so appointed. As stated above, if at all there was an issue with respect to the reservation policy of the ex-servicemen it ought to have been brought up as a service dispute and not in a PIL. The High

Court, with due respect, should have displayed a little more restraint and balance before quashing a selection process in which the persons selected had already put in 3 years of service."

3. Learned Counsel for the petitioner has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of Dr. Meera Massay (Mrs) Dr. Abha Malhotra Dr. S.C. Bhadwal and Others Vs. Dr. S.R. Mehrotra and Others reported in MANU/SC/0084/1998 : (1998) 3 SCC 88 but not only in the case of Girjesh Shrivastava (supra) and a number of earlier judgments noted therein but also subsequently in the matter of Madan Lal v. High Court of Jammu and Kashmir and Others reported in MANU/SC/0267/2014 : (2014) 15 SCC 308, it has been held that:

"9. That apart time and again this Court repeatedly held that in service matters, public interest litigation is not maintainable. We can profitably refer to a recent decision reported in Hari Bansh Lal v. Sahodar Prasad Mahto. Paras 14 and 15 are relevant which are as under: (SCC pp. 660-61)

"14. In Ashok Kumar Pandey v. State of W.B. this Court held thus: (SCC pp. 358-59, para 16)

'16. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that courts are flooded with a large number of so-called public interest litigations where even a minuscule percentage can legitimately be called public interest litigations. Though the parameters of public interest litigations have been indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilised for disposal of genuine cases. Though in Duryodhan Sahu v. Jitendra Kumar Mishra [Duryodhan Sahu v. Jitendra Kumar Mishra, MANU/SC/0541/1998 : (1998) 7 SCC 273 : 1998 SCC (L&S) 1802] this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Whenever such frivolous pleas are taken to explain possession, the courts should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs as aforesaid so that the message goes in the right direction

that petitions filed with oblique motive do not have the approval of the courts.'

The same principles have been reiterated in the subsequent decisions, namely, B. Singh v. Union of India, Dattaraj Nathuji Thaware v. State of Maharashtra and Gurpal Singh v. State of Punjab.

15. the above principles make it clear that except for a writ of quo warranto, public interest litigation is not maintainable in service matters.”

*4. Hence, we are of the opinion that the petitioner is not entitled to benefit of the judgment in the matter of Dr. Meera Massey (supra) and **that the present Public Interest Petition raising a dispute relating to service matter cannot be held to be maintainable which is accordingly dismissed**, however, making it clear that this order will not come in the way of the parties affected from alleged irregularity from approaching the competent Court.”*

(Emphasis Supplied)

*In view of these binding judgments, this PIL is not maintainable. The same is accordingly **dismissed**. However, this order will not come in the way of the affected parties to avail any other remedy available to them under the law.*

(Emphasis Supplied)

4. In view of aforesaid judgments of the Supreme Court and this Court, in our opinion, PIL is not maintainable in service matters. If affected persons are aggrieved by the impugned notification/rules, they may assail it in appropriate regular proceedings. PIL is **dismissed** as not maintainable with aforesaid observation.

(Emphasis Supplied)

10. It is important to note that in the *inter locutory* order passed by the Division Bench on which reliance is placed by the learned counsel for the petitioner, the judgments of the Supreme Court right from **Duryodhan Sahu (Dr.) (supra)** were not considered. The authoritative pronouncement of this Court is the final order passed in WPA (P) 299 of 2025 which was duly followed by this Bench in WPA (P) 268 of 2024. In view of these judgments, we have no doubt that the petitioners are “aggrieved persons” and can challenge their non-selection in appropriate regular proceeding. The PIL at their behest in a ‘service matter’ is clearly not maintainable.

11. Another point raised by the parties was regarding right of petitioners to assail the selection process after becoming unsuccessful. Once, we held that PIL is not maintainable and gave liberty to the petitioners to file appropriate proceedings, we are not inclined to deal with this aspect because it may cause prejudice to the parties. Thus, this question is left open to be decided in appropriate proceedings. More so, when parties have taken a diametrically opposite view on this aspect which must be left open to be decided in appropriate proceeding.

12. In view of foregoing analysis, present PIL is not maintainable and accordingly **dismissed**. Liberty is reserved to the petitioners to file appropriate proceedings for the present grievance.

13. Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with the requisites formalities.

(Sujoy Paul, J.)

I agree.

(Smita Das De, J.)