

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

W.P.A. 18035 of 2011

**Debabrata Jana
-Vs-
State of West Bengal & Ors.**

For the Petitioner : Mr. Kanailal Samanta

For the State : Ms. Debarati Sen (Bose)

Heard and Judgment on : 25.08.2025

Ananya Bandyopadhyay, J.:-

1. The matter is taken up for dictating judgment in Open Court in the presence of the Learned Advocates representing both the parties.
2. The petitioner registered himself for enlistment at the Office of the District Employment, Tamluk, i.e. Employment Exchange on 28.12.1990. An employment exchange card was issued in his favour. By virtue of the enlistment, as aforesaid, the petitioner applied for the post of Clerk-cum-Typist at the Office of the President, District Consumer Disputes Redressal Forum (hereinafter referred to as DCDRF), District – Purba Medinipur. Consequently, on receipt of a letter dated 05.11.2008 from the concerned

Forum, as aforesaid, the petitioner appeared for the written test as well as English type test.

3. The petitioner claimed to have performed comparatively better in the type test. In reply to an application filed by the petitioner on 26.09.2009 under the provisions of the Right to Information Act, 2005, the concerned Forum, as aforesaid, replied the petitioner to have secured 10th position in the selection list concerning the written test and the first position in respect of the type test. Moreover, the reply did not mention the final decision of selection/approval with regard to the appointment of the petitioner.
4. The petitioner, thereafter, communicated several representations to the Principal Secretary, Consumer Affairs Department for finalization of the final selection list for appointment to the post of Clerk-cum-Typist, as aforesaid, on 12.04.2010, 24.05.2010, 06.07.2010, 01.10.2010 respectively. The President of the aforesaid Forum, Purba Medinipur vide a communication dated 22.11.2010 intimated the petitioner, the names of 10 candidates and the respective marks obtained by them in the written as well as the type test.
5. The petitioner contended to have been qualified in both the aforesaid tests as reflected in the reply dated 22.11.2010. Moreover, since the petitioner had been the exceptional candidate to have been qualified in both the aforesaid tests out of 10 candidates, he should have been selected for appointment to the post of Clerk-cum-Typist, which had been otherwise denied by the Forum, as aforesaid, through issuance of an appointment letter in his favour, to address his grievance.

6. The petitioner further requested the Principal Secretary, Consumer Affairs Department and the President, DCDRF, Purba Medinipur to issue an appointment letter for his induction in the service. Through a communication dated 23rd December, 2010, the President, DCDRF, Purba Medinipur stated the merit list of qualified candidates eligible for the post of Clerk-cum-Typist, as aforesaid, had been forwarded to the Government of West Bengal Consumer Affairs Department for appropriate action and grant of approval to the same was awaited. A copy of the said communication forwarded to the aforesaid Department was further forwarded to the petitioner for his information.
7. The petitioner subsequently filed a writ petition being WP-1033(W) of 2011 under Article 226 of the Constitution of India seeking appropriate relief which was disposed of by an order dated 04.05.2011 directing the Secretary to the Government of West Bengal, Consumer Affairs Department to decide the panel in accordance with law within a period of six weeks from the date of communication of the order.
8. By an order dated 25.08.2011, the Principal Secretary intimated the panel prepared by the selection committee was cancelled with a further information that the post of Clerk-cum-Typist was to be filled up on the basis of recommendation of the Public Service Commission negating the scope to appoint the petitioner in the aforesaid post on the basis of recommendation of the selection committee, as aforesaid. The petitioner, thereafter, considered it prudent to pose certain queries with regard to the findings and opinion framed and issued by the Principal Secretary vide

order dated 25.08.2011. The petitioner further applied to the Deputy Secretary, Consumer Affairs Department under Section 6 of the Right to Information Act, 2005 on 01.09.2011 seeking information to his respective queries as mentioned in page nos.11, 12, 13 and 14 of the writ petition replicated as follows:-.

- (i) *Please supply me a copy of the order No. 0236-CA dated 10.02.2005 issued for the purpose of recruitment of one clerk-cum-typist for Purba Medinipur, Consumer Dispute Redressal Forum at Abasbari, District – Purba Medinipur;*
- (ii) *Please supply me a copy of Recruitment Rule for selection/appointment clerk-cum-typist for Purba Medinipur, Consumer Redressal Forum;*
- (iii) *Whether selection authority recommended and decided the names of candidates as per merit in the interview of the candidates. Please let me know whether the assessment of marks of candidates separately in written test and typing test by selection authority is in order, if not please let me know caused for the same;*
- (iv) *Please let me know whether I have submitted the evidence about my typing speed and qualification certificate and also please let me know whether the empanelled candidates submit their evidence relating to their qualification and typing speed;*
- (v) *Whether the recruitment process through Public Service Commission and the recruitment process under Consumer Affairs Department for*

the post of clerk-cum-typist are same and identical, if yes, please supply me a copy of the same;

- (vi) Please let me know how and in what manner the marks of written test and typing test have been assessed;*
- (vii) Please let me know the clarification of the words 'Selection Authority' and 'Selection Committee' as used in order no. 12-SCAD, dated 25.08.2011 issued by the Principal Secretary of Consumer Affairs Department, Government of West Bengal;*
- (viii) Please supply me the copy of the order relating to power of Finance Department relating to interference with the selection process when Selection Committee selected the candidates and prepare a panel for the said post;*
- (ix) Please let me know who is liable to pay compensation to the candidate by not following the recruitment process when my name was sponsored by the Employment Exchange Officer concerned as per requisition of the concerned authority in view of the fact my name will not be forwarded by the concerned Employment Exchange for the next vacancy for about six month or more as the case may be;*
- (x) Please let me know when the decision was taken by Government that the said post to be filled up by the recommendation of the Public Service Commission and a copy of the said decision to be supplied to me;*

- (xi) *Please supply me a copy by which the panel was referred to the Finance Department by the Department of Consumer Affairs;*
- (xii) *Please supply me the observation made by the Finance Department to the procedure of selection for the said post;*
- (xiii) *Please let me know when an order was passed on 10.02.2005 for appointment a clerk-cum-typist, Purba Medinipur, Consumer Dispute Redressal Forum and by the order of Hon'ble High Court an advertisement was also made and interview was held, panel was prepared and forward the same to the consumer authority for its approval then the decision taken by the concerned authority that the said post will be filled-up on the basis of recommendation of the Public Service Commission is valid, and legal in the eye of law;*
- (xiv) *Please let me know whether the selection process for the post of Clerk-cum-Typist as mentioned in the admit card is valid or legal;*
- (xv) *Please supply me report of the Chairman, Selection Committee was referred in the letter bearing no. 1318-CA/F/CADF/2M-15/10 dated 22.06.2011 issued by the Assistant Secretary, Consumer Affairs Department.*

9. The petitioner received information to his queries, as aforesaid, through a letter dated 15.09.2011 issued by the Assistant Secretary and State Public Information Officer enumerated in Paragraph 23 of the writ petition, which inter alia stated as follows:-

- (i) *Copy of the order No. 0236-CA dated 10.02.2005 issued for the purpose of recruitment of one Bench Clerk-cum-Tpyist for Purba*

Medinipur, District Consumer Redressal Forum is attached herewith(Annexure – 1);

- (ii) Regarding second query to the answer it is submitted that no specific recruitment rule was made available for the post of Clerk-cum-Typist, DCDRF, by the Food Supplies Department who was the nodal Department in respect of the Forum till 1999;*
- (iii) Selection authority forwarded the result of written test and type test separately to this Department for consideration and approval. As per opinion of Finance (Audit) Department, 'this does not seem to be in order'. According to Finance (Audit) Department, the selection procedure adopted for testing efficiency of the candidates in typing is not proper and Government in C.A. Department agreed with the above views of the Finances Department;*
- (iv) The question of submission of evidence is not very clear in the absence of mentioning the nature of evidence. If it relates to the submission of evidence about the typing speed he may approach office of President, DCDRF, Purba Medinipur for the required information as the same, if any, is not available at this end;*
- (v) At the material point of time the same was not identical;*
- (vi) Selection authority has the sole authority in assessing the marks of written test and typing test and not by appointing authority;*
- (vii) A selection committee who conducted the selection process is the selection authority as mentioned in the order No. 12-SCAD dated 25.08.2011;*

- (viii) *In terms of Rule 4 of the Rules of Business the business of the Government is transacted in the Department of the Government and is classified and distributed between those Departments. Further Rule 10 ibid envisaged that no Department shall, without previous consultation with the Finance Department, authorize any orders (other than orders pursuant to any general delegation made by the Finance Department) which related to the number of grading or cadre of posts or the emoluments or other conditions of service or posts (Annexure –V);*
- (ix) *No person was recruited on the basis of the test in this regard. It was subsequently found that selection procedure adopted was not proper and submission of panel of candidates separately was also not in order. In view of above, this Department being the competent authority and in pursuance of the direction of Hon'ble High Court for disposal of case passed an order vide No. 12-SCAD dated 25.08.2011 for canceling the recommendation of the committee constituted for the purpose. Therefore, the question of fixing of responsibility and payment of compensation does not arise;*
- (x) *The decision was taken by the Cabinet in its meeting held on 25.09.2008 as communicated by Principal Secretary, Finance Department under circular No. 7651(50)-F dated 01.10.2008 (copy enclosed)(Annexure – II);*
- (xi) *An extract from the copy of the note in which Finance Department has been consulted in this regard is enclosed (Annexure – III);*

- (xii) *The observation of Finance Department is also attached (Annexure – IV);*
- (xiii) *The matter relating to order of Hon'ble High Court is not clear;*
- (xiv) *As already mentioned, the selection process was found to be faulty. Therefore, the same was cancelled by the appropriate authority. So the question of validity of admit card does not arise at this stage;*
- (xv) *No report was received by this Department in response to the mentioned letter, till the cancellation of recruitment process.*

10. The petitioner filed the instant writ petition praying for the following reliefs:

- i) *A writ in the nature of Mandamus Commanding the Principal Secretary, Consumer Affairs Department to instruct the selection committee District Consumer Disputes Redressal Forum, Purba Medinipur to prepare a merit list in placing the petitioner in the 1st position on the basis of list prepared by selection authority taking into account the marks of written test and typing speed and to submit the same to the appropriate authority of Government for issuing appointment letter in his favour on early date.*
- ii) *A writ in the nature of Certiorari directing the respondents to produce all the relevant papers and documents relating to this case so that conscionable justice might be done by quashing the order no.12-SCAD dated 25.08.2011 by this Hon'ble Court.*

11. The Learned Advocate representing the petitioner submitted that the explanation addressed by the Principal Secretary in the order dated

25.08.2011 was not legally sustainable. Therefore, the Principal Secretary should be directed to consider the panel of successful candidates which confirmed the appointment of the petitioner based on his eligibility by the selection committee to be effective according approval to the same and grant appointment of the petitioner to the post of Clerk-cum-Typist considering the merit list prepared by the aforesaid selection committee since the petitioner had qualified himself both in the written test as well as the type test.

12. The Learned Advocate representing the State respondents submitted the selection procedure adopted by the selection committee for the written as well as the type test of the candidates had been detected to be defective and flawed which had been subsequently cancelled. The Department, thereafter, determining the cancellation of the entire process of selection contrary to the legal procedure, decided to recruit candidates through the process of appointment to be regulated through Public Service Commission.
13. The order no.12-SCAD dated 25.08.2011 issued by the Principal Secretary, Department of Consumer Affairs in pursuance of the order passed by this Hon'ble High Court on 04.05.2011 in WP No.1033(W) of 2011, *inter alia*, stated "*It is observed that who amongst the candidates applying for the post should be selected for appointment has to be decided and recommended by the Selection Authority and not the Appointing Authority. Therefore, submission of panel of candidates separately according to the marks obtained in the written test and type test for approval of the Government as in the instant case does not seem to be in order. It is also observed that the*

Selection procedure adopted for testing efficiency for candidates in typing is also not proper. As per usual norms for recruitment in such post the minimum qualification is a Madhyamik pass and a minimum typing speed of 30 w.p.m. and the candidates applying for the post must have to produce suitable evidence about their typing speed, failing which they may not be considered eligible for the post. It is also observed that for selection to the posts of above category by different selecting authority like Public Service Commission, West Bengal, a specimen of legible manuscript containing such No. of words which can be typed within a definite time limit at the rate of 30 w.p.m. and marks in the test are determined on the basis of correctness of Typing, on the basis of marks in both two tests, written and typing, the selection is made by the Selecting Authority.”

14. It was further observed that the selection committee did not conform to the aforesaid procedure in preparation of the merit list in question. Therefore, the conduct of the selection committee had been referred to the Finance Department for opinion which observed “*the selection procedure adopted for testing efficiency of the candidates in typing was not proper*” which, therefore, cancelled the panel of candidates recommended by the selection committee.
15. It was further decided by the Finance Department, State Government to initiate such appointment to the post of Clerk-cum-Typing on the basis of recommendation of the Public Service Commission, Government of West Bengal.

16. The opinion of the Appointing Authority cannot be questioned or interfered with as far as the process of recruitment is concerned unless the candidate challenging the same had been arbitrarily treated violating principles of natural justice as well as resorting to grave and apparent biasness. It had been the administrative decision of the Appointing Authority on detection and verification of the method adopted and exercised by the Selection Committee to have been inconsistent, riddled with discrepancies and defects which were rectified, through cancellation of the entire process of selection without vitiating or violating the individual rights of the candidates, at a juncture prior to the entire process of the appointment to have been culminated in issuing an appointment letter in favour of the candidate, denying favour of equal right and opportunity to another. Moreover, the candidate herein did not suffer any loss or injury to his detriment compared to other candidates.
17. Neither the petitioner can claim nor can the Court direct an Appointing Authority not to act according to legal norms and procedure without complying proper prescribed processes in conducting and pursuing an appointment process. The cancellation of the selection as aforesaid was without prejudice and impairment to any vested right of an individual candidate who did not secure the same prior to the letter of appointment to have been issued in his/her favour. The prayer of the petitioner to direct the respondent authorities to retrieve the panel of the selected candidates as enlisted by the selection committee contrary to the decision subsequently taken by the respondent authorities having detected the irregularities and

inconsistencies therein consequently having cancelled the same should have been exceeding the jurisdiction of this Court.

18. In view of the aforesaid discussions, this Court is not inclined to interfere with the order passed in order No.12-SCAD dated 25.08.2011.
19. Under the facts and circumstances, the instant writ petition being WPA 18035 of 2011 is dismissed.
20. There is no order as to costs.
21. 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.)

Srimanta, A.R.(Ct.)