

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

Present:

The Hon'ble Justice Aniruddha Roy

W.P.A. 29434 of 2024

Anand Pandey

Vs.

**The Chairman-cum-Managing Director,
Coal India Limited & Ors.**

The petitioner-in-person:

Mr. Anand Pandey

For Coal India Limited:

**Mr. Subir Sanyal, Sr. Adv.,
Mr. Shamit Sanyal, Adv.
Ms. Manika Roy, Adv.**

Reserved on:

29.04.2025

Judgment on:

08.05.2025

ANIRUDDHA ROY, J.:

Facts:

1. This is the second round of writ litigation at the instance of the petitioner.
2. The petitioner is a qualified Company Secretary.
3. The petitioner participated in the selection process initiated by the **Coal India Limited (For short CIL) in terms of an advertisement, bearing No. 3/2022** for appointments in various categories. One such category was for the post of Company Secretary. The petitioner applied for the same under **General (UR) category**. As per the advertisement, there were four vacancies. **Three** of which were under **UR- Category** and **one** was under

OBC (Non-Creamy Layer).

4. The petitioner contends that though he obtained a total marks **126** in the **Computer Based Test (for short CBT)**, he was not called for the second phase and the candidate with a lesser marks of **124** had been called for the same. The petitioner with such grievance applied in the first writ litigation being **WPA No. 2956 of 2024** (for short the first writ petition).
5. The first writ petition was disposed of by an order dated **March 22, 2024**, **Annexure P-6 at page 40** to the writ petition passed by a coordinate bench. The relevant portion from the said order is quoted below:

“9. Given the facts that it is possible that the petitioner may have in fact uploaded the documents-in-question and the respondents may not have received the same at their end, 2 this Court has no reason to disbelieve either the Coal India Limited or the writ petitioner.

10. This Court proposes as an exception and without precedent on passing the following order in the instant writ petition.

11. The petitioner’s candidature may be considered upon physical verification of his qualification and considering the marks he has obtained in the CBT. If the petitioner has more marks than any of the selected candidates, the Coal India Limited shall appoint the petitioner without disturbing any of the persons already appointed. He may even otherwise be considered in the 4th vacant post if it is still remained vacant.

12. It is once again made clear that the aforesaid decision has been passed without it being a precedent and the fact that only the petitioner amongst all rejected candidates has approached this Court.

13. Let a decision be taken by the Coal India Limited within three weeks from date and communicate the same to the petitioner in this regard.

14. The writ petition is disposed of.”

6. Being aggrieved by the said order dated **March 22, 2024**, CIL preferred an appeal being **MAT 867 of 2024**. By an order dated **July 31, 2024**, **Annexure P-7 at page 62** to the writ petition, the appeal was dismissed by the Hon'ble Division Bench. The relevant observations of the Hon'ble Division Bench are quoted below:-

“14. On the basis of the materials placed before the learned Single Judge, therefore, the decision of the learned Single Judge cannot be faulted. Learned Single Judge proceeded on the basis of the documents placed before the Court and exercised discretion in granting benefit of doubt to the writ petitioner. Such discretion cannot be said to be perverse.

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16. Learned Single Judge by the impugned order merely directed the candidature of the writ petitioner to be considered on the basis of the physical verification of the documents. Learned Single Judge did not direct grant of employment.

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19. In such circumstances, we find no merit in the present appeal. For abundant caution we clarify that, the appellants is at liberty to deal with the 6 candidature of the writ petitioner, in accordance with law and in terms of the impugned order before us.

20. MAT 867 of 2024 along with connected applications are disposed of without any order as to costs.”

7. Pursuant to the direction of the Coordinate Bench and that of the Hon'ble Division Bench, CIL had again considered the candidature of the petitioner and **rejected** the same by its impugned reasoned order dated **October 30, 2024, Annexure P-8 at page 68** to the writ petition, inter alia, with the following observations:-

“Furthermore, it has been observed that you belong to the General (UR) category and are not a PwD candidate, which you also confirmed during the verification process of the documents on 23.03.2024. It is important to note that out of the 04 vacancies in the CS discipline, 03 were for the General (UR) category and 01 for the OBC (NCL) category. Of the 04 vacancies, 03 were filled i.e. 02 from the General (UR) category and 01 from the OBC (NCL) category. 01 General(UR) category vacancy remained unfilled due to the non-availability of a suitable PwD-VH(LV) candidate. Consequently, this vacancy has been reserved for the PwD-VH(LV) category in accordance with the Guideline/Presidential Directives/Notifications issued time to time from the Government of India.

As per these Directives, if no suitable PwD candidate from the specified sub-category is available, the reserved post must be carried forward and cannot be allocated to a non PwD-UR candidate. Any such application would result in de-reservation of the PwD post, violating the Presidential Directive/Notifications unless prior permission is obtained in this regard from the appropriate Government or Ministry.

Regarding your work experience, as per Point No.2 of Advertisement No. 03/2022 of CIL, it 5 was specified that “Preference would be given to candidates with experience in

a listed company". However, during verification of documents, it was noted that you have worked in private limited companies i.e. 1) Verum Lexicon Private Limited from 02.04.2018 to 31.03.2019 and 2) Claridge Moulded Fibre Limited (01.04.2019 to 30.04.2023) which are not listed. Therefore, the clause regarding preference for candidates with experience in listed companies does not apply in your case.

Thus, in compliance with the orders of the Hon'ble Calcutta High Court, your documents were subjected to physical verification in support of your qualification & experience and it is observed that since balance 01 General (UR) vacancy in CS discipline in CBT-2022 Recruitment Advt. No. 03/2022 of CIL is reserved for a PwD-VH (LV) candidate, there is no scope to appoint you against the said Recruitment Advertisement. Furthermore, from the documents produced by you, it has also been observed that you do not have any working experience in a listed company."

8. The said impugned order dated **October 30, 2024** has been assailed through the instant writ petition with the following prayers.

"a) A writ in the nature of Mandamus and/or appropriate Writ or Writs, order or orders and/or direction or directions be issued commending the respondents and/or each of them and/or their servants, agents, as why the impugned order dated 31.10.2024 should not be quashed and/or set aside and petitioner shall be given appointment.

b) A Writ in the nature of Mandamus and/or appropriate Writ or Writs, order or orders and/or direction or directions be issued commending the respondents and/or each of them and/or their servants, agents, show cause as to why

the order dated 31.10.2024 shall not be quashed.

c) A Writ in the nature of certiorari and/or any other appropriate Writs or Writs, order or orders and/or direction or directions be issued directing the respondents and/or each of them and/or their servants, agents or assigns to communicate the entire records of the case so that conscionable justice may be done to the petitioner.

d) Any other appropriate Writ or Writs be issued to provide complete protection and remedy to the petitioner.

e) Rule NISI in terms of prayer a, b, c, and d above and to make the rule absolute and/or if no cause is shown and/or insufficient causes are shown.

f) Cost or costs be paid by the respondents.

g) Any other or further order of orders be issued as to this Hon'ble Court may deem fit and proper."

9. The writ petition was heard from time to time.

Submission:-

10. Mr. Ananda Pandey, the writ petitioner has argued in person. At the threshold, he submits that CIL has admitted that the petitioner has scored **126** in CBT but was not called upon for the appointment whereas the candidates with lesser marks of **124** had been called upon. Referring to the said order of the Coordinate Bench dated **March 22, 2024**, the petitioner submits that he had uploaded all the requisite documents pertaining to minimum eligible qualification i.e. the Company Secretary passing Certificate (executive and professionals) and the Associate/Fellow Membership Certificate. He had in fact uploaded all these documents which initially were disputed by the CIL. The record produced before the Coordinate Bench demonstrated that the candidates at the first instance

who were shortlisted for the post of Company Secretary, a number of candidates were found with higher marks than the petitioner, but were not considered and were rejected for incomplete application forms submitted by them. The zone of consideration, therefore, was extended to include more candidates from the merit list, to maintain the 1:3 ratio for the purpose of final selection. The candidates qualifying the CBT marks became entitled to remain in the provisional category. The scrutiny of documents of candidates took place at multiple stages in terms of the advertisement. The records produced before the Coordinate Bench further depicted that the **petitioner was considered in the second round** after deletion of the candidates **whose application were found to be incomplete**. In the said second round, the candidature of the petitioner came to be cancelled since he had not uploaded his qualification with the first online application form. Though the petitioner asserted that he had uploaded all the relevant records and documents in the first online application stage.

11. The petitioner submits, in the above facts and circumstances, the Coordinate Bench has made the direction for appointment of the petitioner on **March 22, 2024** with the observations, quoted above.
12. The petitioner then refers to the order of the Division Bench dated **July 31, 2024** and submits that the Hon'ble Division Bench was of the opinion that the appeal did not have any merit and as a result the order of the Coordinate Bench was not interfered with, except with a clarification that the CIL was at liberty to deal with the candidature of the petitioner in accordance with law and in terms of the impugned order. Hence, the direction of the Coordinate Bench was affirmed to the extent that if the

petitioner has more marks than any other selected candidates, CIL was directed to appoint the petitioner on the terms mentioned by the Coordinate Bench and the order of the Coordinate Bench was directed not to be treated as precedence.

13. The writ petitioner then refers to the said impugned order dated **October 30, 2024**. The impugned order records that out of the 3 vacancies in the General (UR) Category, 2 were filled up and out of the one from the OBC (NCL Category), the same was filled up. The **one post** from **General/UR category** which remained **vacant** due to non-availability of proper candidate, has been reserved for **PwD category** in accordance with the guideline issued by the Government of India. The other plea for rejection was the work experience of the petitioner during verification of documents, it was noted that petitioner has worked in Private Limited Companies which were not listed. The clause regarding preference of candidates with experience in the listed companies does not apply for the petitioner.
14. The petitioner submits that on a plain reading of the impugned order it would be evident that a further adjudication has taken place on the candidature of the petitioner at the end of the CIL authority, despite there being a complete adjudication by the Coordinate Bench and the Hon'ble Division Bench. The plea for rejection on the ground of work experience was never raised by CIL either before the said Coordinate Bench or before the Hon'ble Division Bench. It was for the first time raised in the said impugned order and thereby CIL Authority while passing the impugned order has failed to act in the light of the direction given by the Coordinate Bench and the Hon'ble Division Bench. A third case was made out in the

impugned order, which is not permitted in law.

15. For those reasons, the petitioner submits that the said impugned order dated **October 30, 2024** should be set aside and quashed and immediate appointment should be given to the petitioner.
16. Mr. Subir Sanyal, Learned Senior Advocate appearing for the Coal Company referring to the said order passed by the Coordinate Bench dated **March 22, 2024** submits that, the Coordinate Bench directed to give appointment to the petitioner without disturbing any of the persons already appointed. The petitioner was directed to be considered in the 4th vacant post, if it is still remained vacant. He then refers to the order of the Hon'ble Division Bench dated **July 31, 2024** and submits that the Hon'ble Division Bench had modified the order of the Coordinate Bench with the clarification that the Coal Company will be at liberty to deal with the candidature of the petitioner in accordance with law. He submits that the moment the Hon'ble Division Bench directed to consider the candidature of the petitioner in accordance with law, it was implied that the candidature of the petitioner should be considered on its own merit in accordance with law. He submits that the order of the Coordinate Bench was thus modified.
17. Referring to the impugned reasoned order dated **October 30, 2024**, learned senior counsel Mr. Sanyal submits out of the 4 vacancies in the CS discipline, 3 were for General (UR) Category and one for OBC (NCL) Category. All the 4 vacancies, 3 were filled i.e. 2 from General (UR) Category and 1 from the OBC (NCL) category. One General (UR) category vacancy which remained vacant due to non-availability of a suitable PwD-VH (LV) candidate. Subsequently, this vacancy had been reserved for the PwD-VH

(LV) in accordance with the guidelines of the Union of India for the next selection process. Mr. Sanyal submits there is no vacancy left, where, the petitioner could be or can be accommodated. He submits that this Court in exercise of its power Article 226 of the Constitution of India cannot create a post, which is the exclusive domain of the executive/Government/ employer, by changing the rule of selection process or even otherwise. In support, learned senior counsel has relied upon the following decisions:

- i) In the matter of: Divisional Manager, Aravali Golf Club and another vs. Chander Hass and another reported at (2008) 1 SCC 683;***
- ii) In the matter of: State of West Bengal vs. Janardan Bhattacharjee reported at 1998 (4) SLR 400 and***
- iii) In the matter of: Maharashtra State Road Transport Corporation and another vs. Casteribe Rajya Parivahan Karmchhari Sanghatana reported at (2009) 8 SCC 556.***

18. Mr. Sanayal, Learned Senior advocate then refers to the impugned order and submits that since the direction of the Coordinate Bench was modified by the Hon'ble division bench and the Coal Company was directed to consider the candidature of the petitioner in accordance with law, the candidature was considered and rejected with reasons upon detail scrutiny of the record. The impugned order is otherwise well reasoned, versed and should not be interfered by this Court.
19. Accordingly, learned senior advocate prays for dismissal of this writ petition being devoid of any merit.

Decision:

20. After considering the rival contentions of the parties and upon perusal of the materials on record, it appears to this Court that, the qualification of the petitioner that he is a qualified Company Secretary is admitted on facts.
21. On a meaningful reading of the order of the Coordinate Bench dated **March 22, 2024**, it appears to this Court that, petitioner's candidature was directed to be considered upon physical verification of the records and considering the marks he had obtained in CBT. If the petitioner was found that he had obtained more marks than any of the selected candidates, the coal company shall appoint the petitioner without disturbing any of the persons already appointed. He was directed even to be considered in the 4th vacancy post, if it was still remained vacant then. The decision of the Coordinate Bench was directed to be treated without any precedential value and the Coal Company was directed to take a decision on the candidature of the petitioner. While the said order of the Coordinate Bench dated March 22, 2024 was subjected to appeal, the Hon'ble Division Bench by its order dated July 31, 2024 had held that the decision of the Coordinate Bench could not be said to be faulted. The discretion used by the Coordinate Bench was found not to be a perverse one. Ultimately, the Hon'ble Division Bench found no merit in the appeal preferred by the Coal Company. It was observed by the Hon'ble Division Bench, the coal company would be at liberty to deal with the candidature of the petitioner, in accordance with law and in terms of the order of the Coordinate Bench. Such finding of the

Hon'ble Division Bench, which is binding upon this Court, in view of this Court appears to be that the candidature of the petitioner was directed to be considered by the Coal Company in accordance with law in the light of the direction of the Coordinate Bench that the coal company shall appoint the petitioner without disturbing any of the persons already appointed and he may even otherwise be considered in the 4th vacant post, if it was still remain vacant then.

22. It has been submitted on behalf of the coal company, that one post had remained vacant, which was carried forward and kept reserved for the next selection process. As the post was vacant, upon reading the direction of the Coordinate Bench which was not interfered by the Hon'ble Division Bench, it appears to this Court that, it was an obligation on the part of the Coal Company to appoint the petitioner, to which the Coal Company has failed to do.
23. The submissions made on behalf of the Coal Company that the Hon'ble Division Bench has modified the order of the Coordinate Bench is not acceptable by this Court. Once the order of the Coordinate Bench was not interfered with by the Hon'ble Division Bench and the Division Bench specifically directed that the Coal Company was at liberty to deal with the candidature of the petitioner, in accordance with law and in terms of the impugned order before the Division Bench, it clearly shows that the order of the Coordinate Bench had merged with the order of the Hon'ble Division Bench and the direction of the Coordinate Bench has arrived at its finality after being merged with the order of the Hon'ble Division Bench. The doctrine of merger operates.

24. On a careful scrutiny of the impugned order dated **October 30, 2024** rejecting the candidature of the petitioner, this Court is of the considered view that, the authority of the coal company had exceeded its jurisdiction by furnishing new reasons while rejecting the candidature of the petitioner. Once, the order of the Coordinate Bench was not interfered with by the Hon'ble Division Bench and the Hon'ble Division Bench passed its direction to consider the candidature of the petitioner in accordance with law and in terms of the Coordinate Bench order, there was no scope for the authority of the coal company to give new reasons and in rejecting the candidature of the petitioner. The reasons shown by the Coal Company rejecting the candidature of the petitioner were never urged by the Coal Company either before the Coordinate Bench or before the Hon'ble Division Bench. A complete new case was made out by the Coal Company as reasons for rejection, which is not permitted in law. The jurisdiction of the coal company was limited to the extent to consider the candidature of the petitioner and to grant employment to him in accordance with law, in the light of the direction of the Coordinate Bench without disturbing any of the persons already appointed and the petitioner was directed to be considered in the 4th vacant post if it was still remain vacant then. Admittedly, the 4th vacancy was available before the impugned order was passed. The authority of the coal company ought not to have carried forward the 4th vacancy and reserved it for the next selection process before deciding the candidature of the petitioner in the manner it was directed to be considered by the Coordinate Bench and the Hon'ble Division Bench.

25. ***In the matter of: Dental Council of India vs. Dr. Hedgewar Smruti Rugna Seva Mandal, Hingoli and others reported at (2017) 13 SCC***

115, the Hon'ble Supreme Court had held as under:

"25. That leads us to say something about following the precedents. The purpose is to have consistency. A three-Judge Bench in State of Andhra Pradesh v. A.P. Jaiswal observed:- (SCC p.761, para 24)

"24. Consistency is the cornerstone of the administration of justice. It is consistency which creates confidence in the system and this consistency can never be achieved without respect to the rule of finality. It is with a view to achieve consistency in judicial pronouncements, the courts have evolved the rule of precedents, principle of stare decisis, etc. These rules and principle are based on public policy...."

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27. In this regard, we may travel a decade and a half back. In Chandra Prakash v. State of U.P., it has been held:- (SCC p. 245, para 22)

"22. ... The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of this Court."

28. In the instant case, the precedents are clear and luculent. It does not allow any space for any kind of equivocation. In Priya Gupta, the Court had requested the High Courts to ensure strict adherence to the prescribed time schedule, process of selection and role of merit and except in very exceptional cases, to decline interim orders. The Court had added the words "humility at our command". The "grammar of humility in law" in the hierarchical system basically means to abide by the precedents unless distinguishable but not to ignore them and pass orders

because of an individual notion or perception. Adjudication in accordance with precedents is cultivation of humility. As long as a precedent is binding under the constitutional scheme, it has to be respected by all. It has been said by Simone Weil:-

“In the intellectual order, the virtue of humility is nothing more nor less than the power of attention”

29. We reiterate the concept of humility as stated in Priya Gupta. However, we intend to add that the meaning behind the words, namely, “humility”, and “request” as used by this Court, has to be appositely understood by the High Courts. It requires attention. And attention in the context is disciplined and concerned awareness. Nothing more need be said.”

26. All the judgments relied upon on behalf of the Coal Company ***In the matter of: Divisional Manager, Aravali Golf Club and another (supra), State of West Bengal (supra) and Maharashtra State Road Transport Corporation and another (supra)***, it was consistently held that the Court in exercise of its power cannot create a new post. Creation of post is the absolute domain of the State/Employer. The law is well settled in this regard. In the facts and circumstances in the instant writ petition, neither the Coordinate Bench nor the Hon’ble Division Bench in their directions directed to create with any post. The direction was to give an employment to the writ petitioner without disturbing anybody, if appointed. The 4th post was admittedly not filled up at the relevant point of time. Then it was the obligation of the Coal Company to provide employment to the petitioner in the said 4th post before carrying that forward for the next selection process under the PwD Category. The said 4th post was vacant when the directions were made by the Coordinate Bench and the Hon’ble Division Bench. This

Court, in the instant writ petition, also follows the said previous directions. There shall be no direction for creation of any post. Accordingly, the ratio laid down in the said three judgments would not apply in the facts and situations in the instant writ petition and would be of no assistance to the Coal Company.

27. In view of the foregoing discussions and reasons, the impugned reasoned order dated **October 30, 2024** stands **Set aside** and **Quashed**.
28. The respondent Coal Company through its appropriate Authority/authorities upon compliance of all the formalities required to be complied with in accordance with law shall immediately give appointment to the petitioner for the post he has applied for and shall issue the necessary appointment letter in favour of the petitioner positively within a period of **Four Weeks** from the date of communication of this judgment.
29. As there was a specific direction in the order of the previous Coordinate Bench dated **March 22, 2024** that the direction of the Coordinate Bench would not be treated as a precedence and the same has not been interfered by the Hon'ble Division Bench and has been upheld in its order dated **July 31, 2024**, this Court merely follows the same. Accordingly, this judgment shall also not be treated as a precedence in so far as, the direction for appointment of the petitioner is concerned.
30. With the above observations and directions this writ petition being **WPA No. 29434 of 2024** stands **allowed**, without any order as to costs.

(Aniruddha Roy, J.)