

Form No. J.(2)
Item No. 1
AB

**IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction
Appellate Side**

Present:

**The Hon'ble Justice Aniruddha Roy
With
The Hon'ble Justice Prasenjit Biswas**

**M.A.T. 155 of 2023
+
CAN 2 of 2025
in
W.P.A. 619 of 2019**

Sankar Malakar
Vs.
The State of West Bengal & Ors.

For the appellant	:	Mr. Aniruddha Chatterjee, Sr. Adv. (VC) Mr. Niladri Bhattacharjee, Advocate (VC) Mr. Rahul Karmakar, Advocate Mr. Soham Banerjee, Advocate Ms. Deblina Chatteraj, Advocate Ms. Swagata Mitra, Advocate
For the State	:	Mr. Jayjit Chowdhury, Ld. AAG Mr. Nabankur Paul, Advocate
Heard on	:	September 10, 2025
Judgment on :	:	September 10, 2025

Aniruddha Roy, J.

Affidavit of service filed in Court today, is taken on record.

The instant appeal has been taken up by this Bench after the same being released by the Regular Bench.

An intra Court mandamus appeal has been preferred by the appellant being aggrieved by the order dated **August 16, 2023**. By the said impugned order dated August 16, 2023 the Hon'ble Single Bench had dismissed the main writ petition.

The writ petition was filed by the appellant challenging the impugned cancellation of Scheduled Caste certificate by the executive authority dated **June 19, 2019** at **page 191** to the stay application. When the writ petition was moved an interim order was passed on **September 30, 2019, annexure – E** at **page 195** to the stay application directing stay of the impugned gazette notification to the extent it had affected the petitioner and a direction for filing affidavits was made. The interim order was passed for a limited period. Subsequently with the dismissal of the writ petition under the impugned order in the instant appeal, the said interim order had merged with the same and the present status of the writ petition is dismissed by virtue of the said impugned order, which is under appeal.

On perusal of the order impugned dated **August 16, 2023**, it appears to this Court that, the writ petition was dismissed particularly on the ground that the petitioner did not appear before the executive authority who had cancelled the Scheduled Caste status of the petitioner under the impugned order dated **June 19, 2019** at **page 191** to the stay application. The impugned order before us also shows the petitioner submitted few letters before the authority seeking adjournments of the hearing. It further records that several opportunities were granted to the writ petitioner but the writ

petitioner failed to avail of the same and as a result the impugned order of cancellation dated June 19, 2019 was passed and there was no infirmity in it. The impugned order also records that, the rule of natural justice was complied and the writ Court does not sit on appeal over the order of cancellation.

The cancellation of the Scheduled Caste certificate which was initially granted in favour of the petitioner but subsequently cancelled on the ground mentioned in the original show cause notice issued upon the petitioner, would have a serious consequential effect with various consequences. The right of the petitioner after holding status of Scheduled Caste is also recognized under the provisions of the Constitution of India.

On a careful consideration of the impugned order, this Court is of the considered view that, the impugned order dismissing the writ petition has not been passed on merit of the writ petition but more on technical grounds and the petitioner should be granted an opportunity to place the writ petition on its merit. Technical and procedural grounds shall not prevail upon substantive justice. Petitioner cannot be non-suited on technical grounds.

Accordingly, the impugned order under appeal dated **August 16, 2023** stands **set aside**.

The respondents have already filed its affidavit-in-opposition, as this Court has been informed by the learned Additional Advocate General appearing for the State. The writ petitioner has not yet filed its affidavit-in-reply though time has elapsed long back.

For the ends of justice, peremptory opportunity is granted to the writ petitioner to file affidavit-in-reply upon payment of **cost of Rs.25,000/-** in favour of the **Calcutta High Court Legal Services Committee at Jalpaiguri Circuit Bench** within **a week** from date and only then the affidavit-in-reply shall be filed within **two weeks** from the date of the deposit of the cost. The copy of the money receipt shall also be provided to the learned advocate on record for the State in this writ petition.

It is once again made clear that this Court has not gone into the merits of the rival contentions of the parties and all points are kept open to be urged in the writ petition by the parties.

Since the impugned order records that, the interim order in respect of the matter stood vacated and this Court has set aside the said impugned order, the respondent authorities shall not give any effect or further effect to and shall not take any step or further step in terms of the **gazette notification** already published following the **impugned cancellation order dated June 19, 2019**, in so far as the writ petitioner/appellant is concerned without leave of the Hon'ble Single Bench where the writ petition will be finally heard.

Parties shall be at liberty to mention this writ petition for final hearing after the aforesaid period for filing reply stands expired, before the next available Circuit Bench then, subject to its convenience and upon notice to each other.

Since affidavits are not called for, the allegations made in the stay application are deemed not to have been admitted by the respondents.

With the above observations and directions, both the instant appeal **MAT 155 of 2023** along with the connected stay application being **CAN 2 of 2025** stand **disposed of**, after treating the appeal as on day's list for hearing.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)

(Prasenjit Biswas, J.)