

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

Present:

THE HON'BLE JUSTICE RAJASEKHAR MANTHA

AND

THE HON'BLE JUSTICE AJAY KUMAR GUPTA

APO 86 /2025

IA NO: GA/1/2025, GA/2/2025

KOLKATA MUNICIPAL CORPORATION & ORS.

VS.

RIHAN SANYAL & ORS.

WITH

APOT/187/2025

IA NO: GA/2/2025, GA/3/2025

UJJWAL KUMAR SARKAR & ORS.

VS.

SRI RIHAN SANYAL & ORS.

WITH

OCOT/5/2025

KOLKATA MUNICIPAL CORPORATION & ORS.

VS.

SRI RIHAN SANYAL & ORS.

For the Kolkata Municipal Corporation : Mr. Partha Sarathi Bhattacharjee, Sr. Adv.
Mr. Swapan Kr. Debnath, Adv.
Mr. Subhrangsu Panda, Adv.

**For the Respondent Nos. 5-10/
Appellants in APOT/187/2025** : Mr. Jayanta Kr. Mitra, Sr. Adv.
Mr. Sudip Ghosh, Adv.
Sk. Intiajuddin, Adv.
Mr. Bidish Ghosh, Adv.

**For the Writ Petitioners/
Cross-Objectors** : Mr. Ranajit Chatterjee, Adv.
Mr. Prasenjit De, Adv.
Mr. Aniruddha Mitra, Adv.

For the State in APO 86/2025 : Mr. Asish Kumar Guha, Adv.
Mr. Rajendra Chaturvedi, Adv.

For the State in APOT 187/2025 : Mr. Tapan Kr. Mukherjee, AGP
Ms. Sangeeta Roy, Adv.
Ms. Tuli Sinha, Adv.

Reserved on : 11.12.2025

Judgment on : 19.12.2025

Ajay Kumar Gupta, J:

1. These three appeals have been taken up for hearing analogously and for disposal by a common judgment since they arise out of the same judgment and order dated 20-11-2024 passed by the Single Bench of this High Court in WPO 133 of 2021 with IA No. GA 1 of 2021 (Sri Rihan Sanyal and Ors. vs. State of West Bengal & Ors.).

FACTS OF THE CASE

- 2.** The background facts leading to the present appeals and cross objection are as under: -
 - a.** The writ petitioners belong to the General/Unreserved (UR) category and were serving as Executive Engineers (Civil) under the Kolkata Municipal Corporation (KMC). They have challenged an office order dated 3rd March, 2021, issued by the Chief Manager (Personnel), KMC, whereby six out of the ten existing vacancies for the year 2021 in the cadre of Deputy Chief Engineer (Civil), KMC were filled up by promotion from the post of Executive Engineer (Civil), candidates belonging to the scheduled caste (SC) category.
 - b.** During the pendency of the writ petition, the petitioner nos. 1 to 8 were promoted to the post of Deputy Chief Engineer (Civil) at different points in time. Petitioner nos. 9, 10, and 11, however, have still not been promoted. Respondent nos. 5, 7, and 8 have, in the meantime, been promoted to the next higher post of Director General (Civil) on August 2, 2024. The petitioners have assailed the said order on multiple grounds, which are as follows: -
 - i.** That the ceiling limit of 22% reservation for SC category candidates prescribed under Section 5 of the West Bengal Schedule Castes and Schedule Tribes (Reservation of Vacancies in Services and Posts) Act, 1976 (in short 'the 1976 Act') had been breached.

- ii. That three SC candidates were already occupying posts of Deputy Chief Engineer (Civil), out of a cadre strength of 19, permitting promotion of only one more SC candidate in the normal course. Promotion of five SC candidates would result in SC candidate representation increasing to 26.31%, breaching the statutory limit.
- iii. That even after accounting for a carry-forward vacancy as submitted by the KMC, the appointment of six SC candidates still violated the 22% ceiling limit prescribed by law. The appointments of Ujjwal Kumar Sarkar and Sanjoy Kumar Mondal (Respondent nos. 5 and 6) as UR candidates were illegal, as they were promoted merely on the basis of seniority, without any merit-based assessment, contrary to the rules of promotion.
- iv. That the vires of Rule 10(d) of the Rules framed under the 1976 Act was bad in law. Rule 10(d) permits appointment of an SC candidate against an ST vacancy and vice versa, in case of unavailability of the respective category candidate. The Petitioners prayed for the said Rule to be struck down, and the promotion granted to Respondent no. 10, Swapan Karmakar, on conversion of an ST post into an SC post, be cancelled.
- v. Lastly, the promotion granted to two SC candidates, Durjoy Sarkar and Uday Ranjan Saha, (Respondent Nos. 8 and 9) were against the 18th and 21st vacancies in the 50-point roster, both reserved

for SC candidates. As per the 22% ceiling limit, only one SC candidate could be accommodated at the relevant stage. The writ Petitioners alleged these promotions to be contrary to the ceiling limit prescribed in the Act, and further upheld by the Hon'ble SC in ***R. S. Garg vs State of U.P. and Ors.***¹. Upon hearing the parties, the Hon'ble Single Bench passed the impugned judgment and order as aforesaid.

OBSERVATION OF THE SINGLE BENCH:

3. The Single Bench, while examining the challenge to the KMC's office order dated 3rd March, 2021, promoting 6 scheduled caste candidates to the post of Deputy Chief Engineer (Civil), held that even though the reservation framework and Rule 10(d), permitting interchangeability between SC and ST vacancies were valid, KMC had erred in applying the roster and acted contrary to statutory requirement and constitutional principles in a way that allowed individual promotions. The Court also held that the two SC officers were wrongly accommodated against unreserved vacancies without undergoing the merit-based assessment, mandated under Rule 10(b), and that the 18th, 21st, and 24th roster points were improperly manipulated to benefit certain junior SC officers, resulting in excessive reservation and unjust supersession of eligible general category candidates.

¹ (2006) 6 SCC 430

4. It was further observed that seniority lists had attained finality and that the catch-up rule must operate to protect the legitimate expectations of senior officers, who were appointed on merits. In this regard, the Court held the promotions of Uday and Swapan to be illegal, and directed, that while they may continue only in supernumerary posts, the posts themselves shall stand abolished upon their retirement or further promotion. Simultaneously, the Court set aside the promotions of Ujjwal, Utpal, and Durjay to the post of Director General (Civil), clarifying that they would be treated merely as officiating appointees, and mandated a fresh selection process in which all eligible officers—both unreserved and reserved—must be considered together since the post carries no reservation.
5. The Court also directed that Subhasish and Santanu, belonging to the general category, be accorded notional promotion from the date their juniors were elevated, with full restoration of seniority and monetary benefits, and that the remaining petitioners' seniority be corrected.
6. The Court further held that the seniority of Petitioner numbers 1, 4 to 8, who have already been promoted to the post of Deputy Chief Engineer (Civil), by virtue of being senior to Uday and Swapan (retired), must be restored in the cadre of Deputy Chief Engineer (Civil) by applying the catch-up rule. Necessary steps were directed to be taken forthwith.

7. With regard to petitioner numbers 9, 10 and 11, the Court held that they are entitled to be promoted to the post of Deputy Chief Engineer (Civil). As and when a vacancy arises, they shall be entitled to regain seniority over those SC candidates who were promoted earlier, but were junior to them and not entitled to be appointed.
8. Finally, while dismissing the challenge to the validity of Rule 10(d), the Court issued comprehensive directions to reconstitute the promotion and selection processes so that the cadre structure and seniority position within the engineering wing of KMC reflect both statutory reservation norms and constitutional requirements of fairness, merit, and equality.

SUBMISSIONS ON BEHALF OF KMC/APPELLANT IN APO 86 OF 2025:

9. Mr. Bhattacharya, learned Sr. Advocate appearing for KMC contended that the learned Single Bench erred in holding that Petitioner nos. 2 and 3 ought to have been promoted against two unreserved posts allegedly illegally filled by Ujjwal Sarkar and Sanjay Kumar Mondal. It was argued that the learned Judge failed to appreciate Rule 10(b), wherein the said candidates were fully eligible for promotion based on the gradation list finally published.
10. It was next submitted that the learned Single Bench wrongly directed the post, held by Uday Ranjan Saha and Swapan Karmakar, in the cadre of Deputy Chief Engineer (C) of KMC, be treated as supernumerary and stand abolished upon their retirement or further promotion. It was argued

that the Single Bench failed to appropriately apply the provisions of the 1976 Act, the 50-point roster, and the gradation list; hence, the prayer for the impugned order to be set aside and/or cancelled and/or quashed.

- 11.** It was further submitted that the learned Single Bench erred in setting aside the ad-hoc promotions to the post of Director General (Civil) granted to Ujjwal Sarkar, Utpal Mistry and Durjay Sarkar for six months or until regularization, subject to the recommendation of the selection committee. Such cancellation was arbitrary and contrary to the statutory recruitment scheme.
- 12.** Learned senior counsel for the KMC strenuously argued that the reservation under the 1976 Act is based on vacancy and not on cadre. By virtue of Section 5 of the 1976 Act, 22% reservation for SC candidates is to be applied to the 50-point roster, which may consequently result in vacancies arising due to the carry-forward rule or conversion of ST vacancy. By the order dated March 3, 2021, which has been challenged before this court, 10 Executive Engineers (Civil) were promoted to the post of Deputy Chief Engineer (Civil), out of which six vacancies were filled by SC candidates, whereas four posts were filled by general category candidates. The question whether the ten vacancies which had arisen out of the sanctioned post of 19 could be filled up by six Executive Engineers (Civil) in the SC category and four in the general category, could be answered by referring to the vacancy in the roster number. As per the

roster, the 15th vacancy was to be filled by an SC candidate. At the material point in time (earlier promotional drive), no SC candidate was available within the zone of consideration. The vacancy was filled by a UR candidate. The 16th vacancy, although unreserved, was treated as a carry-forward SC vacancy as no SC candidate had been available earlier for the 15th vacancy. It was contended that the promotions were strictly in conformity with Rule 10(a) of the Reservation Rules and the 50-point roster was to be filled by an SC candidate. This unreserved post was thus, filled up by the carried forward SC. As there were ten vacancies for the post of Deputy Chief Engineer (Civil), 50 candidates were considered in the ratio of 1:5 as per Rule 10 (a) of the Reservation Rules of 1976. The vacancies were required to be filled up from the 16th point to the 25th point of the 50-point roster.

- 13.** As per the roster, the vacancy positions were to be filled up by the reserved and unreserved categories in the manner that, 16th vacancy = unreserved (carry forward Schedule caste); 17th vacancy = unreserved, 18th vacancy = scheduled caste; 19th vacancy = unreserved; 20th vacancy = unreserved; 21st vacancy = scheduled caste; 22nd vacancy = unreserved; 23rd vacancy = unreserved; 24th vacancy = scheduled tribe and 25th vacancy = unreserved. Therefore, as per the roster of vacancies from the 16th to the 25th points, there were two vacancies to be filled up by the SC candidate, one by the ST candidate, and the remaining vacancies were to

be filled by unreserved candidates. Having due regard to the relevant provisions of the reservation rules as amended, the available vacancies were filled in the instant case by appointing six SC candidates. The 16th point vacancy was for an unreserved candidate but was treated as a carried-forward (SC) vacancy.

SUBMISSION ON BEHALF OF APPELLANTS IN APOT 187 OF 2025:

14. Mr Mitra, the learned Senior Counsel appearing on behalf of the appellants/respondent nos. 5 to 10, adopted most of the arguments and submissions made on behalf of the KMC and further added that SC candidates were promoted to the unreserved category posts on the basis of merit-cum-seniority. Their performance was duly considered while according promotion. The Gradation list prepared and published by the KMC has never been challenged by the writ petitioners. While promoting the SC and General category posts, the KMC has rightly followed the rules of promotion. However, learned counsel contends that the Single Judge erred in holding that the promotion of Ujjwal Kumar Sarkar and Sanjoy Kumar Mondal (Respondent nos. 5 and 6) was illegal.

SUBMISSIONS ON BEHALF OF THE RESPONDENT NOS. 1-6, 8-11 IN

APO 86 OF 2025/ CROSS-OBJECTORS:

15. Learned counsel representing the cross- objectors/respondent nos. 1 to 6, 8 to 11 vehemently opposes the prayer of the learned senior counsels for the appellants of both appeals and support the impugned judgment

passed by the Hon'ble Single Judge, wherein the office order dated 3rd March, 2021, passed by the Chief Manager (Personnel) was rightly interfered with.

- 16.** It was further argued that an SC/ST candidate can be accommodated in an unreserved vacancy only based on merit and not otherwise. In the case of the appellants/petitioners and/or the Respondents, admittedly, the only merit assessment undertaken by KMC was at the stage of their initial recruitment as Asst. Engineers (Civil). The merit list at that time published by KMC, clearly demonstrates that Respondent nos. 5 and 6, promoted as UR candidates, were not entitled to such consideration. Their promotion, therefore, was illegal.
- 17.** The writ petitioners/respondents herein have filed a cross-objection against the judgment and order passed by the learned Single Judge, only on the issue as to whether the learned Single Judge erred in granting promotion and seniority to certain SC candidates by counting fortuitous appointments against reserved vacancies, thereby exceeding the prescribed roster and ignoring the seniority rules. It was further contended that while the learned Single correctly appreciated the Reservation Act and the Rules thereunder, as well as the roster mechanism, it erred in directing that the posts held by Uday Ranjan Saha and Swapan Karmakar be treated as supernumerary and they shall continue to hold the post till their retirement or promotion to the next

higher post and, thereafter, those posts shall stand abolished. It is submitted that the aforesaid specific direction was unwarranted in the facts of the case. However, the remainder of the judgment required no interference. It is denied that the Learned judge failed to appreciate the reservation laws and/or the 50-point roster. Accordingly impugned order is required to be modified.

- 18.** It was further submitted that the Learned Judge rightly held that the catch-up rule continues to apply to KMC. Ujjwal Sarkar, Utpal Mistry and Durjay Sarkar have been promoted to the post of Director General (Civil) on an ad hoc basis during the pendency of the writ petition for six months or until regularization. The Learned Judge rightly interpreted the provisions of law, the catch-up rule and the 50-point roster, and declared the seniority of the persons belonging to SCs and STs on promotion against roster points to be ultra vires Articles 14 and 16 of the Constitution of India. A resolution of the Appellant Corporation dated 13.10.2012 implementing 85th amendment of the Constitution by the grant of promotion to SC candidates against vacancies reserved for them with consequential seniority by way of amendment of existing regulations of KMC was sent to the State government on 17.10.2012 for its approval but the same has not been approved by the State Government, till date, as required under Section 604 of the KMC Act, 1980, promotion against roster vacancies reserved for S.C candidates cannot be given to them with

consequential seniority, and accordingly, Catch up Rule has to be implemented in KMC. As such, the respondents have filed cross-objections against the judgment and order.

- 19.** It was further submitted that during the pendency of the writ petition, the Respondents nos. 13, 15 and 16 were promoted to the post of Director General on ad hoc basis by an order issued by the Chief Manager (Personnel) dated 02.08.2024. Since such promotions were given to them to the post of Director General, which is a selection post, without considering the candidatures of two candidates from the unreserved category (Respondents nos. 2 and 3), who were illegally denied promotion to the feeder post of Deputy Chief Engineer (Civil), by promoting two SC candidates, the Ld. Judge rightly cancelled such promotion by moulding reliefs, which was very much permissible in view of the order dated 16.03.2021 passed in the writ petition. Therefore, the actions of the Respondent KMC are totally illegal, while Sukanta Das, Kamal Sarkar, Ujjwal Kumar Sarkar, Durjoy Sarkar and Utpal Mistry are occupying five, out of a total of eleven posts of Director General, though a selection post, throwing the Constitutional provision of Article 335 to the wind. Pertinently, Respondents nos. 13, 15 and 16 are holding on to such posts even today notwithstanding the direction contained in the impugned order dated 20.11.2024, although the said order has not been stayed.

- 20.** It was finally submitted that the Single bench has thoroughly discussed the judgment of the Supreme Court, specifically ***R. K. Sabharwal v. State of Punjab***², but the same does not apply in the present case.
- 21.** In support of his contention that a Scheduled Caste candidate cannot be accommodated against general caste vacancies unless the promotion is merit-based, reliance was placed on the following cases: -
- i. ***Indra Sawhney and Ors. v. Union of India and Ors.***³ particularly in paragraph no. 811;
 - ii. ***Ajit Singh Januja and Ors. v. State of Punjab and Ors.***⁴ particularly in paragraph no. 9;
 - iii. ***Ajit Singh and Ors. (II) v. State of Punjab and Ors.***⁵ particularly in paragraph nos. 31 to 35;
 - iv. ***K. Manorama v. Union of India represented by General Manager Southern Railway and Ors.***⁶ particularly in paragraph no. 17.
- 22.** In support of his contention that catch-up rule will apply in the absence of legislation by State, reliance is placed in the case of ***B.K. Pavitra and Ors. v. Union of India and Ors.***⁷ particularly in paragraph nos. 16, 21, 28 and 29 and ***Municipal Commissioner, KMC and Ors. v. Tapan Kumar Paul and Ors.***⁸ particularly in paragraph no. 25.

² (1995) 2 SCC 745

³ 1992 Supp (3) SCC 217

⁴ (1996) 2 SCC 715

⁵ (1999) 7 SCC 209;

⁶ (2010) 10 SCC 323;

⁷ (2017) 4 SCC 620;

⁸ 2019 SCC OnLine Cal 2370.

FINDINGS AND ANALYSIS OF THIS COURT

- 23.** We have heard the arguments and submissions of the learned counsels for the respective parties, and upon perusal of the record, this Court finds that the writ petition being no. 133 of 2021 was filed by the petitioner nos. 1-6 and 8-11/cross-objectors to challenge the promotions of the respondent nos. 5-10 in the post of Deputy Chief Engineer (Civil) in Kolkata Municipal Corporation without maintaining the actual provisions as stipulated in the 50-point roster, as well as promotion to the post of Director General (Civil), without following the catch up rule.
- 24.** Before entering into the merits of the case, this Court would like to refer to the relevant provisions applicable to promotions of the employees of Kolkata Municipal Corporation for ready reference and for the purpose of proper and effective disposal of this case.
- 25.** Section 5 of the West Bengal Scheduled Castes and Scheduled Tribes (Reservation or vacancies in Services and posts) Act, 1976, read as follows: -

“Reservation for members of the Scheduled Castes and the Scheduled Tribes in vacancies to be filled up by promotion in any establishment shall be regulated in the following manner, namely: -

(a) there shall be reservation at [twenty-two per cent.] for members of the Scheduled Castes and- [six per cent.] for members of the – “[Scheduled Tribes in the manner Setout in Schedule II:]

Provided that the State Government may, from time to time, by notification in the Official Gazette, increase the percentage so,

however, that the reservation shall not exceed twenty-five per cent, in the case of Scheduled Castes and ten per cent on the case of Scheduled Tribes;

Provided further that the number of any Scheduled Caste or Scheduled Tribe employee appointed on promotion to any unreserved vacancy in a service or post in any establishment to be filled up by promotion shall not be deducted from the quota reserved in such service or post for the members of the Scheduled Castes or the Scheduled Tribes under this section.

(b) There shall be no reservation in any post carrying the grade pay exceeding Rs. 8,700,

(c) A separate fifty-point roster shall be maintained by every establishment in the manner set out in the Schedule.”

- 26.** Rule 10(b) of the said Rules of 1976 provides that even a candidate from SC or ST who has obtained promotion on the basis of merit with due regard to the seniority, his promotion should be made against UR vacancy and the reserved vacancy should be filled by candidates from remaining SC or ST category, irrespective of merit, from those who were within the normal zone of consideration and fit for promotion.
- 27.** At the same time, Rule 10(d) of the said Rules of 1976 provides that an SC employee may also be considered for appointment against a vacancy reserved for STs or vice versa, where the appropriate reserved vacancies could not be filled by SC or ST candidates, as the case may be.
- 28.** The aforesaid provision reveals the promotion of employees in accordance with the 50-point roster under Section 5 (Schedule II) of the West Bengal SC and ST (Reservation of Vacancies in Services and Posts) Act, 1976, to

the extent that 22% of the vacancies are reserved for SC candidates, 6 % for ST, and the rest are for UR. With the introduction of the 50-point roster, the concept of a post or vacancy-based reservation roster, where specific slots are allocated to candidates belonging to the SC/ST/UR category, had to be maintained while promoting employees. Thus, the reservation for SC candidates is confined to 22% of the rostered vacancies, irrespective of the cadre strength.

- 29.** Section 5(c) of the 1976 Act makes it incumbent on KMC to maintain a 50-point roster in the manner specified in Schedule II of the 1976 Act in promotional posts.
- 30.** The roster must be permitted to operate till the 50th post in the cadre is filled up. Once the roster cycle reaches the 50th point, subsequent vacancy arising in the cadre must be filled by a candidate belonging to the same category as that of the incumbent whose retirement, promotion, resignation or death caused the vacancy.
- 31.** Schedule II (iv) of the 1976 Act further provides that the roster is to be implemented as a “running account” from year to year. Every Government establishment must maintain a 50-point register for promotional posts to know the actual vacancy and the starting roster point. The purpose of a running account is to ensure that the SC/ST candidates secure the appropriate percentage of reservation earmarked for them. Under the running account concept, promotion to the cadre is to be given while

maintaining the roster. When the operation of the roster fills the 50th vacancy in a cadre, the result envisaged by the 1976 Act is achieved.

- 32.** It is an admitted fact that there were 19 posts in the cadre of Deputy Chief Engineer (Civil) in KMC. Therefore, in accordance with the 50-point roster, a maximum of four posts could be reserved for the SC candidates. Since the present dispute is with regard to the SC and UR categories, this Court is concerned only with adherence to the 22% SC reservation. Learned counsel for the KMC disputed the fact that the reservation was vacancy-based and not cadre-based. The percentage of reservations applied to vacancies arising at any given point is distinct from the number of incumbents already occupying positions in the cadre due to carry-forward circumstances or by conversion of ST to SC.
- 33.** The writ petitioners had challenged the order dated 3rd March, 2021 whereby 10 Executive Engineers (Civil) were promoted to the post of Deputy Chief Engineer (Civil). Out of these ten vacancies, six were filled by SC candidates, and four were filled by UR candidates. The question that arises here is whether such distribution in reservation to fill vacancies is consistent with the 50-point roster, particularly from a limited cadre of 19 posts. Therefore, such questions need to be answered whether the 10 vacancies that had arisen out of sanctioned posts of 19 could be filled up by six Executive Engineers (Civil) in SC category and four in UR category by referring to the vacancy in the roster principle.

- 34.** At the material point of time, vacancies in the roster corresponded with the 16th vacancy to the 25th vacancy of the 50-point roster, so the starting point would be the 16th point and the ending point would be the 25th point of the 50-point roster. According to the 50-point roster, 16th vacancy = unreserved (carry forward Schedule caste from 15th vacancy) the said point was provisionally filled by an employee belonging to the UR category; 17th vacancy = unreserved, 18th vacancy = scheduled caste; 19th vacancy = unreserved; 20th vacancy = unreserved; 21st vacancy = scheduled caste; 22nd vacancy = unreserved; 23rd vacancy = unreserved; 24th vacancy = scheduled tribe and 25th vacancy = unreserved.
- 35.** Therefore, between the 16th and the 25th points, there were only two vacancies that were to be filled by SC candidates, only one by an ST candidate, and the remaining vacancies were to be filled by the unreserved candidates. The 24th point was reserved for an ST candidate, due to unavailability of ST candidate within the zone of consideration i.e. converted to SC category candidate in view of the Rule 10(c) of the Reservation Rules, 1976 which provides that in the absence of qualified SC or ST candidates for a particular vacancy, the reserved vacancy should be carried forward till the next reserved vacancy occurred in the 50 point roster but not beyond that point.
- 36.** The KMC has maintained a combined gradation list for both the reservations in the UR category of employees. No separate gradation list

was maintained in a particular cadre. Each category of employees had a category-wise gradation. Such gradation list has not been challenged by any of the employees, since the said gradation list was prepared and published in accordance with the applicable statutory service rules and settled administrative practice.

- 37.** According to the submissions advanced by the learned counsel for the KMC, at no stage were the vacancies in the post of Deputy Chief Engineer (Civil) ever filled by the Reserved Category employees in excess of the quota prescribed in the 50-point roster.
- 38.** It further appears that currently there is no provision for a “catch-up rule” in the rules and regulations governing the KMC. In the absence of such a provision, the petitioners cannot claim the benefit of any catch-up mechanism merely because employees belonging to the Reserved Category were promoted without applying such a rule, as contested by the learned counsel for KMC.
- 39.** That being the position, the petitioners did not have any scope to avail the catch-up rule when the employees in the reserved category were promoted without complying with the catch-up rule, as per the contention of the learned counsel representing the Municipality. However, the promotion to the next higher post i.e. Director General (Civil), does not require any reservation. The promotion to such posts must be according to the merit list prepared at the time of selection to the cadre post. Experience for a

certain number of years in the position of Deputy Chief Engineer (Civil) is also essential for promotion to such post. Such promotion arises when candidates occupy a higher-level post from its feeder grade or feeder category at entry-level. Employees in a feeder post are eligible for promotion to a higher post if they meet the required qualifications and are considered suitable, often through the departmental promotional committee.

- 40.** Moreover, the post in question does not attract reservations in promotion, and advancement to a higher cadre is required to be made strictly on the basis of merit, as determined at the time of initial selection to the cadre post. Promotion in the hierarchy arises when an employee moves from a feeder grade to a higher level, provided that the candidate meets the prescribed eligibility criteria. According to the current structure, Executive Engineer (Civil) constitutes the feeder post. All the eligible officers from this cadre are to be considered for promotion based on merit cum seniority as per the applicable rules.
- 41.** It appears from the records that 10 posts in the common cadre of Deputy Chief Engineer (Civil) were lying vacant. These vacancies were to be filled by way of promotion from the feeder post of Executive Engineer (Civil). Those posts were sought to be filled by promotion from amongst the Executive Engineer (Civil).

- 42.** It is revealed from the records that the last promotion to the cadre was made against roster point no.15, which is a point reserved for an SC candidate. However, due to the unavailability of an eligible SC candidate, the said point was provisionally filled by an employee belonging to the UR category. As per Rule 10(c) of the 1976 Rules reservation against the 15th vacancy has to be carried forward to the 16th Vacancy.
- 43.** It is also important to note that the roster at Schedule II of the 1978 Act is post-based, and not vacancy-based. Following the 50-point roster, including clause (iv) of Schedule II of the 1978 Act, read with Rule 10 (c) of the 1978 Rules, the next ten vacancies must be filled up in the following manner: -

“16th vacancy- Unreserved (Reserved for Schedule Caste under carry forward rule)”

17th vacancy = unreserved,

18th vacancy = scheduled caste;

19th vacancy = unreserved;

20th vacancy = unreserved;

21st vacancy = scheduled caste;

22nd vacancy = unreserved;

23rd vacancy = unreserved;

24th vacancy = scheduled tribe and

25th vacancy = unreserved

However, if no qualified Scheduled Caste employee is available for promotion to the post reserved for Scheduled Castes, such post may be filled up by Scheduled Tribe employee and vice versa. For non-availability of reserved category candidate, the carry forward rule to

the extent permitted under Rule 10 (c) of the 1976 Rules should be applied.

Reservation 22% and 6% respectively for the Scheduled Castes and Scheduled Tribes employees can be maintained if the 50-point roster is followed. Many reserved category employees are presently occupying the said post is irrelevant.

44. Having examined the statutory framework governing reservation in promotional posts, this Court is now required to determine whether the impugned promotions in the cadre of Deputy Chief Engineer (Civil) were made in accordance with the 50-point roster prescribed under the 1976 Act.
45. It is well settled that in matters of reservation in promotion, the post-based roster system must be followed. The Hon'ble Supreme Court, in the case of **R.K. Sabharwal (Supra)**, has held that reservation has to be determined with reference to the number of posts in the cadre, and not with reference to the vacancies arising from time to time, a principle now firmly deep-rooted in-service jurisprudence.
46. It was further held in the said case that once the prescribed quota of reserved posts in a cadre is filled, no further reservation can be made until such reserved posts fall vacant by retirement or other modes of cessation.
47. It is also duly noted that in the absence of catch-up rule in the service regulations of the KMC, employees of the reserved category who have been validly promoted under the roster cannot be placed below their general

category counterparts merely because the latter obtained a promotion later. In ***B.K. Pavitra (Supra)***, the Supreme Court upheld the validity of consequential seniority given to reserved category promotees in the absence of catch-up rule. The said decision has also been relied upon by the cross-objectors as well as the Single Bench.

48. The doctrine of catch-up rule has been judicially evolved to balance the equality mandate under Art. 14 and 16(1) of the Constitution with the enabling provisions of reservation in promotion under Art. 16(4) and 16(4A). This principle postulates that accelerated promotion granted to a junior belonging to a reserved category does not automatically confer accelerated seniority over a senior belonging to the general category, unless consequential seniority is validly provided by law.
49. Applying the aforesaid principles to the present case, it is undisputed that although the KMC passed a resolution seeking to implement consequential seniority pursuant to the 85th amendment, the same has admittedly not received approval of the State Government. In the absence of such approval, no statutory force can be attached to the said resolution. Therefore, the learned Single Judge rightly held that the catch-up rule continues to govern promotions within the KMC.
50. Since the catch-up rule is applicable, officers in the reserved categories, though entitled to promotion against roster vacancies, cannot claim seniority over their seniors in the feeder list, who were appointed on merit.

Any such conferment of seniority would be ultra vires Article 14 and 16, as repeatedly held by the Supreme Court.

51. Another settled principle that is equally fundamental is that a scheduled caste/scheduled tribe candidate may be appointed or promoted against an unreserved vacancy only on the basis of merit and not reservation. In the case of **R. K. Sabharwal (Supra)**, the Court held that reservations cannot be extended to unreserved posts and that merit appointments do not count against the reserved quota.
52. The same principle was reiterated in **Jitendra Kumar Singh v. State of Uttar Pradesh⁹**, wherein the Hon'ble Supreme Court held that if a reserved category candidate is promoted against an unreserved post, the employer must demonstrate that such promotion was based purely on merit, independent of reservation.
53. In the present case, despite repeated assertions that promotions were made on "merit-cum-seniority," the Appellant/Corporation has failed to place any material on record to substantiate such a claim that SC category employees were accommodated in unreserved category. No Departmental Promotion Committee proceedings, no comparative evaluation, no grading or performance matrix, and no marks or assessment criteria or ACR have been produced before this Court. Rather,

⁹ (2010) 3 SCC 119

KMC admitted that there was no separate test as interview and no ACR evaluation as there was no ACR maintained.

- 54.** Significantly, the only merit assessment relied upon by the Corporation pertains to the initial recruitment of the officers as Assistant Engineers. Such an entry-level assessment, conducted decades earlier, cannot legally or logically substitute a merit evaluation at the stage of promotion to the post of Deputy Chief Engineer, which is a senior supervisory position involving distinct responsibilities and higher administrative competence.
- 55.** In the absence of any contemporaneous merit-based evaluation, the promotion of reserved category officers against unreserved vacancies ceases to be a case of merit promotion and becomes a colourable extension of reservation, which is constitutionally impermissible. The Supreme Court has consistently frowned upon such indirect reservation, holding it to be violative of Articles 14 and 16.
- 56.** Therefore, the learned Single Judge was fully justified in concluding that the promotions in question were not supported by any demonstrable merit assessment and that the catch-up rule necessarily applied. The interference with the promotional exercise was thus a corrective measure to restore the constitutional balance between reservation and equality of opportunity.
- 57.** The learned Single Bench has correctly applied the reservation framework under the 1976 Act, the Rules and the roster mechanism, and has rightly

held that promotion of reserved category officers against unreserved vacancies, in the absence of any demonstrable merit-based assessment, is legally unsustainable. The appellant-Corporation failed to place any material to establish that such promotions were made on merit.

- 58.** This Court also concurs with the finding that the catch-up rule should apply to the engineering cadre of the Kolkata Municipal Corporation. In the absence of State approval under Section 604 of the KMC Act, 1980, no consequential seniority could have been conferred pursuant to the Eighty-Fifth Constitutional Amendment, and seniority had to be restored in accordance with settled constitutional principles.
- 59.** The directions issued by the learned Single Judge, including the setting aside of ad hoc promotions to the post of Director General (Civil) and the grant of notional promotion and seniority to eligible officers, are proportionate, corrective and well within the jurisdiction of the writ court.
- 60.** The Single Judge has further rightly turned down the prayer of the cross objectors seeking a declaration that Rule 10(d) of the West Bengal Schedules Castes and Scheduled Tribes (Reservation or vacancies of Services and posts) Rules, 1976, providing for filling up of Scheduled Tribes vacancies by Scheduled Castes Candidates and Vice versa in the event of non-availability of ST/SC Candidates (as the case may be), is bad

in law and ultra vires The cross-objectors have failed to assign satisfactory reasons in support of such challenge.

61. This Court does not see the need to advert to the challenge to the vires of Rule 10(d) in view of the clear powers conferred under article 16(4A) of the Constitution.
62. In appellate jurisdiction, interference is unwarranted unless the impugned judgment is shown to suffer from perversity or patent illegality. No such ground is made out in the present case.
63. Accordingly, the appeals as well as cross objection fail. The judgment and order dated 20th November 2024 passed by the Single Bench calls for no interference and same is hereby **affirmed**.
64. Consequently, **APO 86/2025, APOT/187/2025** and **OCOT/5/2025** stand **dismissed** without order as to costs.
65. All connected pending applications are also, thus, disposed of.
66. Parties to act on the server copy of the Judgment, duly downloaded from the official website of this Hon'ble High Court.

- 67.** Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

I Agree.

(Rajasekhar Mantha, J)

(Ajay Kumar Gupta, J.)