

W.P.S.T. 66 of 2026

**Kazi Salahuddin
Vs.
The State of West Bengal & Ors.**

Mr. Firdous Samim,
Ms. Gopa Biswas,
Mr. Hasanuz Zaman,
Mr. Ayush Majumder,
Ms. Salini Bhattacharjee,
Ms. Brinita Dutta

...for the Petitioner

Ms. Chandreyi Alam, Id. A.G.P.,
Ms. Runu Mukherjee

...for the State

Ms. Shraboni Sarkar,
Ms. Umme Habiba Khatun

...for the P.S.C., W.B.

1. The present writ petition arise out of an order dated 18.06.2024 passed by the West Bengal Administrative Tribunal ("Tribunal" for short) on the petitioner's Original Application (O.A. No. 607 of 2021) whereby and whereunder the Tribunal did not find any substance in the petitioner's claim for appointment in the recruitment process in question.
2. Heard the learned advocate for the writ petitioner/applicant and the learned advocate for the respondents.
3. The writ petitioner was an applicant in a process of recruitment initiated in the year 2017, for appointment of Panchayat Accounts and Audit Officer. The recruitment process resulted in recommendation dated 10.01.2018, for an

appointment, whereby and whereunder 140 candidates were recommended.

4. The petitioner was an applicant under the unreserved category. The number of candidates recommended for recruitment against the unreserved category was 66. The writ petitioner was aggrieved by the fact that his name did not figure in the list of recommended candidates. He thereafter pursued the authorities under the Right to Information Act seeking information in the following terms :

“a) What is the Cut off marks of General category in the final merit list published by the P.S.C.W.B?

b) What is the total marks obtained by my client in written examination?

c) Whether the commission further publish any Second/waiting list?”

5. The P.I.O. responded by reply dated 01.10.2019:

In response to query no.1, the petitioner was informed that the cut off marks was 140 in the unreserved category.

As regards the marks obtained by the petitioner, the P.I.O. informed that he had secured 120.5 in the written examination and 14 in the interview, therefore, he secured a total of 134 marks.

The third query was also responded by stating that there was no question of publication of any second list, as the panel is no longer valid. Such reply was given on 01.10.2019.

6. After the recommendation dated 10.01.2018 made by the Public Service Commission, the petitioner was aware that 66 candidates had been recommended for recruitment, as against the number of vacancies advertised (84). He chose not to raise any grievance in this regard. Even while making an application under Right to Information Act, no such issue was raised, as is apparent from the above-noted three queries.
7. Three (03) years after the recommendations dated 01.10.2018, the petitioner made a representation dated 27.01.2021, whereby and whereunder, he raised a grievance in the following terms :

“It is pertinent to mention here that through a RTI reply dated 1st October, 2019 I came to know that you arbitrarily set a cut off marks for general category. But in the notification there was no Whisper about such cut off marks for general category and you arbitrarily set a cut off marks. Even there is no specification about the cut off marks in the same notification it is settled principle of law that recruitment authority cannot change rules in the midway of the game. It is a complete arbitrary, whimsical act of the recruitment

authority. The decision of your good office is contrary to the interest of the candidates. It is settled that an advertisement issued for filled up the vacant post and if there is suitable candidates then that post must be filled up by the suitable candidates.”

8. Such grievance was raised for the first time by this representation which was made the basis of filing an Original Application before the West Bengal Administrative Tribunal ('Tribunal' for short) bearing O.A. No. 607 of 2021. The Original Application was rejected by the Tribunal on 18.06.2024, which is the subject matter of a writ petition filed in the year 2026.
9. From the above noted events and timeline it is obvious that the petitioner chose not to raise an objection regarding non-filling up of the remaining 18 vacancies, either after the recommendations were made by the P.S.C., nor at the time of making an application under the Right to Information Act. Even after the information was supplied by the P.I.O. on 01.10.2019 no such grievance was raised by the writ petitioner.
10. Under the above facts and circumstances we are of the considered view that filing of representation in the year 2021 cannot lay down the foundation for invoking the jurisdiction of the Tribunal for raising such a grievance.

11. It is by now a settled proposition of law that the cause of action for the purposes of limitation/delay and laches has to be determined with effect from the earliest date on which the cause of action accrued, in this case being the recommendation dated 01.10.2018. In this connection, we consider it apposite to take into consideration decision of the Apex Court in the case of ***Union of India and Others vs. M.K. Sarkar*** reported in **(2010) 2 SCC 59**. Paragraph 15 of the judgment reads:

“15. When a belated representation in regard to a “stale” or “dead” issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the “dead” issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.”

12. Making of a representation three years thereafter, would not further enlarge the limitation as contemplated under the Administrative Tribunals Act.

13. Taking into consideration such time lapse, we are of the view that on this ground alone, the order of the Tribunal, impugned, does not require any interference in exercise of discretionary, extraordinary jurisdiction by this Court under Article 226 of the Constitution of India.
14. We considered the issue from a different perspective also. Assuming the petitioner approached the Tribunal within time, even then invocation of jurisdiction of the Tribunal was permissible only in respect of an enforceable right. In our view the petitioner has not been able to make out a case based on any enforceable right for invocation of the Tribunal's jurisdiction.
15. The law is well settled that mere participation in the recruitment process does not vest any right in the candidate in respect of the vacancies advertised. Our such view is fortified by decisions of the Hon'ble Supreme Court of India in the case of ***the State of Haryana Vs. Subash Chander Marwaha & Ors.*** reported in ***(1974) 3 SCC 220*** as well as decision of the Apex Court in the case of ***Dinesh Kumar Kashyap & Ors. Vs. South East Central Railway & Ors.*** reported in ***(2019) 12 SCC 798***.
16. Considering the two Judgements, we find that it is open to the employer to decide the number of vacancies to be filled up. Unless it is shown that such decision is arbitrary, or otherwise vitiated on

well-settled grounds; or if someone lower in the panel was appointed, normally the Courts would not interfere with exercise of such discretion.

17. No such case is made out for interference in the present case.
18. In view of the two Judgements considered above, we also find no enforceable claim is made out.
19. Lastly, we would consider the Judgement relied upon by the learned advocate for the applicant/writ petitioner, in the case of ***Tej Prakash Pathak & Ors. Vs. Rajasthan High Court & Ors.*** reported in ***(2025) 2 SCC 1***. It is referred to sustain a submission that the fixing of the cut off marks was unsustainable in the facts and circumstances of the present case.
20. We find such submission to be untenable. There is no issue of any new criteria being introduced in a recruitment process from which it can be said that the authorities have changed the rules of the game after the advertisement. The basic factual premise for applying the Judgement of the Apex Court in the case of ***Tej Prakash Pathak & Ors.***, is absent in the present case. The Judgement lays down an undeniable proposition of law binding on this Court, however, the same does not apply to the facts and circumstances of the present case, which are distinguishable.
21. We find reliance placed on this Judgement also to be misplaced in the present case.

22. We find no merit in the Writ Petition.
23. The Writ Petition is accordingly dismissed.

(Madhuresh Prasad, J.)

(Biswaroop Chowdhury, J.)