

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

BEFORE : HON'BLE JUSTICE SAUGATA BHATTACHARYYA

W.P.A. 6863 of 2025

MANOJ BASUNIA & ORS.

VS.

THE STATE OF WEST BENGAL & ORS.

WITH

W.P.A. 6867 of 2025

PRASANTA AICH & ANR.

VS.

THE STATE OF WEST BENGAL & ORS.

For the Petitioners : Mr. Pampa Dey (Dhabal), Advocate
Mr. Biswarup Chatterjee, Advocate
Ms. Sangita Banerjee, Advocate
Mr. Pritam Sarkar, Advocate

For the State : Mr. Tapan Kumar Mukherjee, AGP
Mr. Tarak Karan, Advocate

For the High Court
Administration : Mr. Siddhartha Banerjee, Advocate
Mr. Anjan Bhandari, Advocate

For the Respondent
nos. 5 & 6 in
W.P.A. 6863 of 2025 : Mr. Manujendra Narayan Roy, Advocate
Mr. G. Halder, Advocate
Mr. B. Nandy, Advocate

Hearing concluded on : 14th May, 2026

Judgment on : 3rd July, 2026

Saugata Bhattacharyya, J.:

1. Writ petition being WPA 6863 of 2025 (Manoj Basunia & Ors. vs. The State of West Bengal & Ors.) is considered first. Petitioners in WPA 6863 of

2025 were working as Peon (Group-D) under judgeship of Cooch Behar. Petitioners were desirous to be promoted to the post of Lower Division Clerk (LDC) and participated in the promotional process which was conducted in terms of the West Bengal District Court (Constitution of Service, Recruitment, Appointment, Probation and Discipline of Employees) Rules, 2015 (hereinafter referred to as “said Rules of 2015”) along with other eligible candidates.

2. In the writ petition petitioners challenged order no. 223/A dated 20th December, 2024 of the Chairman, District Recruitment Committee & District and Sessions Judge, Cooch Behar being respondent no. 4. Said impugned order dated 20th December, 2024 was issued in terms of the order dated 27th September, 2024 passed on a writ petition being WPA 2179 of 2024 (Manoj Basunia & Ors. vs. The Chairman, District Recruitment Committee & Ors.) passed by a coordinate bench. The writ petition being WPA 2179 of 2024 was preferred by the petitioners in WPA 6863 of 2025. Vide impugned order dated 20th December, 2024 respondent no. 4 negated contention of the petitioners and decided that petitioners did not come within the zone of consideration for being favoured with promotion to the post of LDC.
3. It was submitted on behalf of petitioners that as promotional process was convened in terms of the said Rules of 2015 and Rule 22(b) provides in case of recruitment by promotion, seniority-cum-merit is the methodology

meaning thereby seniority subject to minimum fitness of the candidate to discharge duties of the post and such candidate is eligible for promotion.

4. It was also contended that all the three petitioners qualified in fitness test therefore as per seniority and by treating them as Scheduled Caste (SC candidates) they were required to be promoted to the post of LDC and by denying petitioners' right of promotion, promotional process conducted by respondent no. 4 was vitiated. It was also submitted that 50-point roster was not appropriately followed to accommodate eligible candidates in the next higher cadre i.e. LDC resulting in denial of promotion to eligible SC candidates.
5. On behalf of Registrar General, High Court at Calcutta being respondent no. 3 and respondent no. 4 submissions were made to defend decision of respondent no. 4 dated 20th December, 2024. It was jointly submitted on behalf of respondent nos. 3 & 4 that 16 posts of LDC under the judgeship of Cooch Behar were to be filled up by promotion from the cadre of Group-D and Process Server. It was also submitted that promotion was conducted in terms of said Rules of 2015 and basis of promotion was seniority-cum-merit in terms of Rule 22(b). A list of 46 Group-D employees was prepared by concerned authority disclosing their educational qualification and respective positions in the gradation list who were considered for promotion to the post of LDC. At the same time list of three candidates who were serving as Process Server, disclosing their educational qualification and respective

positions in the gradation list, was also disclosed in the resolution of the meeting dated 24th July, 2024 of the District Recruitment Committee.

6. As per relevant provisions of said Rules of 2015 fitness test was conducted to find out whether candidates who were desirous to be promoted to the post of LDC are suitable to man the post of LDC or not. In the resolution dated 16th August, 2024 of the District Recruitment Committee final lists were prepared after holding fitness test. One list contained names of three candidates from the cadre of Process Server all of whom qualified in fitness test. Another list contained names of 46 candidates including three petitioners disclosing candidates who qualified in fitness test and who could not clear fitness test. In the said list respective positions of those 46 Peons in the gradation list was also disclosed. It was submitted applying 50-point roster candidates from the cadre of Peon and Process Server who qualified fitness test were allotted vacancies commencing from 29th vacancy and ended at 44th vacancy. It was decided by the respondent no. 4 that due to unavailability of SC/ST candidates within the zone of consideration for being promoted to the post of LDC reserved vacancies were carried forward in terms of the West Bengal Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1976 (hereinafter referred to as “said Act of 1976”).
7. It was argued on behalf of respondent nos. 3 & 4 that all the three petitioners though qualified fitness test but amongst list of 46 candidates, petitioner no. 1, Manoj Basunia ranked 38th, petitioner no. 2, Shyamal

Sarkar ranked 44th and petitioner no. 3, Swaraj Gobinda Roy ranked 42nd thereby they did not come within the zone of consideration taking note of the fact that first 16 candidates who qualified fitness test were promoted to the post of LDC on applying 50-point roster.

8. While considering facts of the case vis-à-vis promotional process conducted by the concerned authority on applying 50-point roster certain flaws were found in allotting vacancies to the candidates who participated in the promotional process by offering their candidature in fitness test. It was found there was a requirement to redo allotment of vacancies to the candidates who figured in two separate lists prepared for promotion from two separate cadres viz. Process Server and Group-D as per 50-point roster to protect the right of SC/ST candidates to be considered for promotion appropriately. Consequently, two candidates namely, Md. Khaybar Hossain and Md. Majibul Hossain whose names were appearing against serial nos. 15 and 16 in list of 16 candidates who were granted promotion may not come within the zone of consideration for being promoted; those two candidates were added as additional respondents in the writ petition being WPA 6863 of 2025 and were served with notice. Learned advocate representing those respondent nos. 5 & 6 (additional respondents) used affidavit-in-opposition which was affirmed on 13th May, 2026 and same was considered at the time of hearing of this writ petition. It needs to be stated herein that petitioners did not wish to use affidavit-in-reply to the affidavit-in-opposition affirmed on behalf of respondent nos. 5 & 6.

9. Learned advocate representing respondent nos. 5 & 6 relied upon Rule 10(d) of the West Bengal Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Rules, 1976 (hereinafter referred to as “said Rules of 1976”). Rule 10(d) provides reserved vacancies for SC and ST will continue to be reserved for the respective community only, a Scheduled Caste employee may also be considered for appointment against a vacancy reserved for Scheduled Tribe, or vice-versa, where appropriate reserved vacancy could not be filled up by Scheduled Caste or Scheduled Tribe candidate as the case may be. Reliance was also placed on Rule 10(c) wherein it is provided in absence of qualified Scheduled Caste or Scheduled Tribe candidate against a particular reserved vacancy, the reserved vacancy shall be carried forward till the next reserved vacancy occurs in the 50-point roster but not beyond. According to respondent nos. 5 & 6, in view of the provisions contained in Rule 10(c) and Rule 10(d) of said Act of 1976 there was no illegality in allotting 43rd and 44th vacancies to the respondent nos. 5 & 6 as per 50-point roster since it was clarified at page 31 of the report of respondent no. 4 being part of the resolution dated 16th August, 2024 of the District Recruitment Committee that *albeit* 36th vacancy was reserved for SC but due to unavailability of SC/ST candidates within the zone of consideration said 36th vacancy was carried forward up to 40th vacancy and one Kalyan Roy being SC candidate was appointed against 40th vacancy.

10. In addition thereto in reference to paragraph 2 of the resolution of meeting dated 24th July, 2024 of the District Recruitment committee it was submitted that five candidates were required to be considered against one post at the time of promotion which was not followed vitiating the selection process.

11. Promotional process was convened indisputably in terms of Rule 22(b) of the said Rules of 2015. Court finds it apt to quote Rule 22 below :-

“22. Procedure of recruitment – Subject to the provisions of these rules, the recruitment to any category of post in the Service shall be made by the appointing authority –

(a) in the case of direct recruitment, after giving such adequate publicity to the recruitment as the appointing authority may determine;

(b) in the case of recruitment by promotion, on the basis of seniority-cum-merit, that is, seniority subject to minimum fitness of the candidate to discharge the duties of the post, from among persons eligible for promotion.”

12. Petitioners along with other candidates offered their candidature for being promoted to the post of LDC from the feeder posts of Group-D/ Process Server and as the basis of promotion was seniority-cum-merit, fitness test was conducted where candidates were required to qualify to become eligible for being considered for promotion. Recruitment on promotion as per methodology of seniority-cum-merit necessitates candidate to qualify the suitability/fitness test and thereafter benefit of promotion is extended based on their seniority following gradation list. In other words,

once candidate qualifies suitability/fitness test performance in the test becomes insignificant and promotion is granted as per seniority following gradation list notwithstanding marks/performance in suitability/fitness test.

13. In the present case out of forty-six candidates from the cadre of Group-D and three candidates from the cadre of Process Server 16 candidates were favoured with promotion to the post of LDC. However, offering of vacancies to the candidates were to be made in terms of 50-point roster. Three petitioners are SC candidates and according to respondent authorities they did not come within the zone of consideration *albeit* they qualified fitness test. A list of 16 candidates is disclosed at pages 30 & 31 of the report of respondent no. 4 which is part of the resolution of meeting dated 16th August, 2024 of the District Recruitment Committee, these 16 candidates were granted promotion.

14. While scrutinizing said list of 16 candidates who were granted promotion first three candidates namely, Samir Das (Process Server), Amar Kumar Roy (Peon) and Brojendra Nath Barman (Peon) were offered 29th, 30th and 31st vacancies under 50-point roster which were earmarked for unreserved candidates but aforesaid three candidates are SC candidates. These three SC candidates were rightly offered 29th, 30th and 31st vacancies meant for unreserved candidates as per their seniority in the gradation list. However, in violation of 50-point roster and Rule 10(c) of the said Rules of 1976 one Dineswar Rava being an ST candidate was offered 32nd vacancy which was

reserved for SC candidate and eligible SC candidates were available. Therefore, Dineswar Rava ought not to be offered 32nd vacancy rather he was required to offer 43rd vacancy which was reserved for ST candidate under 50-point roster if seniority of Dineswar Rava does not require offering of unreserved post above 43rd vacancy. Violating 50-point roster 43rd vacancy was offered to Md. Khaybar Hossain (respondent No. 5) who is not an ST candidate and 43rd vacancy was reserved for ST candidate. As per seniority in the gradation list Kalyan Roy who was wrongly offered 40th vacancy was required to offer 32nd vacancy in place of Dineswar Rava as according to 50-point roster 32nd vacancy was meant for SC candidate. Once Kalyan Roy's position is upgraded from 40th to 32nd vacancy it will pave way for one Tanmay Kumar Sarkar to occupy 36th vacancy i.e. also meant for SC candidate. Resultantly, one Malabika Barman whose position is 37th in the list of 46 candidates of Group-D cadre who qualified fitness test will get 40th vacancy i.e. also reserved for SC candidate. Due to aforesaid flaws while allotting vacancies under 50-point roster to the candidates whose names featured in the two lists concerned respondent authorities are required to redo the exercise of granting promotion following 50-point roster from the two separate lists one containing forty-six candidates from Group-D cadre and another containing three candidates from the cadre of Process Server. Allotment of vacancies to 16 candidates as per 50-point roster which is part of resolution dated 16th August, 2024 of the District Recruitment Committee shall not be retained on record in granting promotion to eligible candidates and such exercise is set aside.

Respondent no. 4 is directed to complete the process of allotting vacancies following 50-point roster for promotion to the post of LDC from the two separate lists, one containing forty-six candidates from Group-D cadre and another containing three candidates from cadre of Process Server within a period of four weeks from the date of communication of this order.

15. It needs to be clarified herein that three SC candidates namely Samir Das, Amar Kumar Roy and Brojendra Nath Barman were promoted to the post of LDC against 29th, 30th and 31st vacancies under 50-point roster which were meant for unreserved candidates and these three candidates shall not be treated to have occupied vacancies reserved for SC candidates since in terms of their seniority as per relevant gradation list they were required to be given preference in getting promotion as they were senior to other eligible candidates. In this regard reliance is placed on the judgment reported in **2026 SCC OnLine SC 87 (Airport Authority of India & Ors. vs. Sham Krishna B & Ors.)**. In paragraphs 32 and 33 of **Airport Authority of India** (supra) Hon'ble Supreme Court allowed migration of reserved category candidates to the unreserved list on the basis of their own merit as they secured higher marks than the General Category candidates. While enunciating law Hon'ble Supreme Court took note of another judgment delivered in the case of **Rajasthan High Court vs. Rajat Yadav in Civil Appeal No. 14112 of 2024** decided on 19th December, 2025. In the present case based on seniority-cum-merit candidates were to be promoted to the post of LDC and as such on qualifying minimum fitness test seniority

as per gradation list would be the sole criterion for granting promotion whereas in **Airport Authority of India** (supra) based on test *inter se* merit of the candidates were adjudged for appointment. As per gradation list if reserved category candidates (SC/ST candidates) were found to be senior to other eligible candidates while granting promotion senior candidates' right to be considered first for promotion ought not to be negated as they are reserved category candidates and they can well be offered vacancies meant for unreserved candidates. Once reserved candidates are found to be senior as per gradation list than unreserved candidates, they are entitled to occupy posts meant for unreserved candidates by allowing migration as contemplated in **Airport Authority of India** (supra); therefore, this court finds no impediment in applying ratio of **Airport Authority of India** (supra) in the present case.

16. On behalf of respondent nos. 5 & 6 reliance was placed on Rule 10(c) and Rule 10(d) of the said Rules of 1976 but those rules do not come in aid of respondent nos. 5 & 6 since it is provided therein that in absence of qualified SC/ST candidates against a particular reserved vacancy, reserved vacancy shall be carried forward till the next reserved vacancy occurs in the 50-point roster but not beyond. It is not a case where qualified and eligible SC/ST candidates were not available at the time of granting promotion against vacancies reserved for SC/ST candidates as per 50-point roster. Therefore, carrying forward of vacancies as contemplated under Rule 10 was not required. Consequently, reasons assigned in resolution of the meeting

dated 16th August, 2024 of the District Recruitment Committee and in paragraph 8 in the impugned order dated 20th December, 2024 that due to unavailability of SC/ST candidates within the zone of consideration reserved vacancy was carried forward, are based on misplaced consideration as such impugned order dated 20th December, 2024 of respondent no. 4 is set aside.

17. However, it is made clear if on completion of exercise as directed above to allot vacancies as per 50-point roster to the candidates from the aforesaid two lists containing forty-six candidates (Group-D) and three candidates (Process Server) respondent nos. 5 and 6 are found to be not eligible for promotion, both of them are not required to refund their enhanced salary and emoluments for the period they discharge duty as LDC.
18. The writ petition being WPA 6863 of 2025 stands disposed of.
19. In the writ petition being WPA 6867 of 2025 both the petitioners could not qualify fitness test therefore their claim to be promoted to the post of LDC is not tenable. Hence the writ petition stands dismissed.
20. Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(SAUGATA BHATTACHARYYA, J.)