

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

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Prasenjit Biswas

**W.P.S.T. 66 of 2024
With
IA NO.: CAN 1 of 2025**

**Saikat Saha and others
Versus
State of West Bengal and others.**

For the Petitioners : Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.,
Mr. Bikram Banerjee,
Mr. Arka Nandi.

For the State : Mr. Tapan Kumar Mukherjee, Id. AGP,
Mr. Somnath Naskar.

For the P.S.C., W.B. : Mr. Rajdeep Biswas,
Mr. Debraj Dutta.

Judgment on : March 30, 2026.

Madhuresh Prasad, J.:

1. The present writ petitioners were three out of the five applicants before the West Bengal Administrative Tribunal (in short 'Tribunal'). They approached the Tribunal with the following relief:

a. A direction upon the respondent authorities set aside the illegal appointments, revisit the panel and give appointment to the Applicant.

b. A direction upon the respondent authorities to serve copies to the illegal appointees if needed.

c. A direction for investigation of the respondent authorities by an Agency outside the purview of the state of West Bengal.

d. A direction directing the respondent authorities to certify and transmit the records of the case to the Hon'ble Tribunal so that conscionable justice may be administered;

d. To pass such other order and/or orders, direction and/or directions as to Your Lordships may deem fit and proper.

2. The brief factual background is that an advertisement was issued for recruitment of Lower Division Assistant and Lower Division Clerks. The advertisement was dated 27.11.2015. The petitioners emerged successful in Part-I and Part-II of the recruitment process. At this juncture, the Commission, conducting the recruitment process, came out with a notification announcing the introduction of a type test. The announcement was dated 18.07.2018 fixing the date of type test on 24th and 25th July, 2018. After the type test was conducted, a recommendation dated 04.09.2018 was published recommending the eligible candidates. The petitioners' names were not included in the recommendation.
3. We consider it relevant to take into consideration a fact that two out of the three present writ petitioners participated in the type test after raising an objection regarding introduction of the type test.
4. The writ petitioners emerged unsuccessful but took no steps in this regard. Some other candidates who had participated in the same process, invoked the Tribunal's jurisdiction by filing O.A.No.620 of 2018.

5. An order was passed therein on 15.02.2022 directing the respondents to publish the break up marks. On break up marks being published, the present writ petitioners found that those having lesser marks than the writ petitioners were recommended for appointment, whereas the petitioners were not recommended.
6. It is in this background, that the writ petitioners approached the Tribunal by filing an original Application bearing O.A. No.784 of 2022. Since the Tribunal is non-functional for want of any Member, it was submitted by the learned senior counsel for the writ petitioners that the applicants are remediless and therefore left with no option, but to invoke the writ jurisdiction of this court under Article 226 of the Constitution of India. Learned Counsel relied upon decision of the Hon'ble Supreme court of India in the case of **Roger Mathew Vs. South Indian Bank Ltd. & Ors.** reported in **(2020) 6 SCC 1**.
7. By earlier order dated 07.11.2025, we, therefore, proceeded to consider the claim.
8. It is submitted by the Learned Senior Advocate representing the applicants/writ petitioners that the introduction of a type test, after the Part-II examination is not sustainable, in view of the decision of the Apex Court in the case of **Tej Prakash Pathak and others Vs. Rajasthan High Court and others** reported in **(2025) 2 SCC 1**. It is submitted that such introduction of type test amounts to changing the rules of the game after the game commenced, and in the midst of the game; and is, therefore, impermissible.

9. It is also submitted that since the life of the recommendation dated 04.09.2018 was limited for a period of one year, the subsequent recommendation dated 12.02.2021 is unsustainable. The same manifests irregularity in the recruitment process. Therefore, the petitioners are entitled to the relief prayed for in the Original Application.
10. On an earlier date in this proceeding, an issue was raised that the petitioners were never communicated the result of the type test for ascertaining whether they had emerged qualified or not qualified, we therefore directed for producing the result of the type test. The result has been produced in two categories, one of the qualified candidates; and the other of unqualified candidates. The petitioners' names figured in the unqualified candidates list.
11. Relying upon the lists, copies of which were handed over to the petitioners' learned advocate way back in November, it is submitted on behalf of the petitioners that the same manifests gross irregularity and arbitrariness in inclusion and exclusion of candidates. It appears from the two lists submitted that placement of certain candidates, changed from unqualified to qualified, and vice versa to shower undue benefits on chosen persons, at the cost of the meritorious candidate like the petitioners.
12. We find that copies of the two lists were served on the petitioners' learned advocate nearly five months back. However, no steps were taken to articulate such issues by way of an affidavit so as to enable the respondents to meet such allegations.

13. Since the writ petitioners have chosen not to make any specific allegations with reference to any names, or examples by way of any averments, by filing an affidavit, we are not inclined to allow the learned advocate for the writ petitioners to raise such indistinct allegations orally during arguments. Moreso, since the respondents did not have an opportunity to meet any such allegation in this regard. It will not be proper to take the respondent by surprise. It is by now a settled legal proposition that the proceedings before the Tribunal and the writ court are considered, and decided based on averments made in the applications/petition along with supportive documents, as annexures. In absence of any averments in this regard, we, therefore, are of the view that the learned advocate for the petitioners cannot be permitted to raise such issues orally during arguments.

14. Learned advocate for the respondent Commission and the learned State advocate have submitted that introduction of type test was on account of a policy decision taken in this regard which is contained in a memorandum dated 04.08.2017. Clause 5 of the same reads as follows:

“(v) With effect from the date of issue of this Memorandum, for direct recruitment to the post of LDA/LDC the skill on Computer operation and Computer typing of the candidates shall have to be judged by the recruiting agency before they send their recommendations of selected candidates to the Government.”

15. From a plain reading of the memorandum issued by the Finance (Audit) Department, we find that it was binding and uniformly applicable to all candidate in the recruitment process. We find no force in submission of

the learned Advocate for the writ petitioner that type test was introduced with an oblique motive of showering undue benefits on chosen few. Such submission is unsustainable.

16. The type test requirement was notified on 18.07.2018, but was to be conducted subsequently. The notification dated 18.07.2018, however, was not put to challenge by any of the writ petitioners. In fact, only two out of the present three writ petitioners had submitted an objection in this regard. But having submitted such objection, they chose to participate in the process. Thereafter, they participated in the type test. Therefore, the writ petitioners are estopped from raising an issue regarding introduction of the type test being unsustainable and illegal.

17. The present writ petitioners have failed in the type test and were placed in the not qualified lists, which shows their level of performance in the type test. We also find that the authorities have maintained full transparency in the process.

18. Our attention was drawn also to the fact that the writ petitioner No. 1 made an application under the RTI for following information:

- “1. Marks obtained by the Applicant in Part I Examination.*
- 2. Marks obtained by your Applicant in (English) Part II Examination.*
- 3. Marks obtained by your Applicant in (Bengali) Part II Examination.*
- 4. The cut-off marks on which the Final Merit List was prepared.*
- 5. Certified copy of the Applicant's evaluated answer sheet.”*

19. The commissioner did not supply the requested information. Even thereafter, the petitioners, did not take any steps. The learned advocate for the writ petitioners however, submits that the rejection was for the

present and, therefore, it was only natural that the petitioners would wait rather than rush to the court.

20. Such submission is nothing more than a desperate attempt by the learned Advocate for the writ petitioner to justify the inaction on the part of the writ petitioners to assail the introduction of a type test in the process of selection.

21. By now it is trite that after unsuccessfully participating in a recruitment process it is not open to the candidate to turn around and challenge the recruitment process alleging infirmity in the same. We consider it apposite to refer to decision of the Apex Court in this regard in the case of **Tajvir Singh Sodhi and Others vs. State of Jammu and Kashmir and Others** reported in **(2023) 17 SCC 147**.

22. We, further, proceeded to consider the submission on behalf of the petitioners with reference to decision of the Apex Court in the case of **Tej Prakash Pathak** (*supra*). The conclusions in the decision are stated in paragraph 65 of the judgment of the constitution Bench in the following terms:

“65. We, therefore, answer the reference in the following terms:

65.1. Recruitment process commences from the issuance of the advertisement calling for applications and ends with filling up of vacancies;

65.2. Eligibility criteria for being placed in the select list, notified at the commencement of the recruitment process, cannot be changed midway through the recruitment process unless the extant Rules so permit, or the advertisement, which is not contrary to the extant Rules, so permit. Even if such change is permissible

under the extant Rules or the advertisement, the change would have to meet the requirement of Article 14 of the Constitution and satisfy the test of non-arbitrariness;

65.3. The decision in K. Manjusree [K. Manjusree v. State of A.P., (2008) 3 SCC 512 : (2008) 1 SCC (L&S) 841] lays down good law and is not in conflict with the decision in Subash Chander Marwaha [State of Haryana v. Subash Chander Marwaha, (1974) 3 SCC 220 : 1973 SCC (L&S) 488] . Subash Chander Marwaha [State of Haryana v. Subash Chander Marwaha, (1974) 3 SCC 220 : 1973 SCC (L&S) 488] deals with the right to be appointed from the select list whereas K. Manjusree [K. Manjusree v. State of A.P., (2008) 3 SCC 512 : (2008) 1 SCC (L&S) 841] deals with the right to be placed in the select list. The two cases therefore deal with altogether different issues;

65.4. Recruiting bodies, subject to the extant Rules, may devise appropriate procedure for bringing the recruitment process to its logical end provided the procedure so adopted is transparent, non-discriminatory/non-arbitrary and has a rational nexus to the object sought to be achieved;

65.5. Extant Rules having statutory force are binding on the recruiting body both in terms of procedure and eligibility. However, where the rules are non-existent, or silent, administrative instructions may fill in the gaps;

65.6. Placement in the select list gives no indefeasible right to appointment. The State or its instrumentality for bona fide reasons may choose not to fill up the vacancies. However, if vacancies exist, the State or its instrumentality cannot arbitrarily deny appointment to a person within the zone of consideration in the select list.”

23. The constitution Bench acknowledged the discretion of the recruiting bodies to devise appropriate procedure for bringing the recruitment process to its logical end, subject to the extant rules. The procedure as per the judgment is required to be transparent non-discriminatory/ non-arbitrary and having a rational nexus to the objects sought to be achieved. Introduction of type test in the present case, as noted above was the result of a policy decision, which uniformly laid down a requirement for testing the candidates as regards their skill of computer operation and computer typing before the recruiting agency sends the recommendation of the selected candidates. Such uniform policy decision, in view of the large-scale computerization in the offices of the State Government in our opinion has a rational nexus to the objects sought to be achieved by introduction of a type test. The same has been done by way of a notification dated 18.07.2018, which demonstrates transparency. The introduction is non-discriminatory and non-arbitrary.

24. We, therefore, in view of our consideration above find no scope for the petitioner to allege that introduction of the type test can be considered to be an introduction of arbitrariness, based on any extraneous consideration or that such introduction would offend Article 14 or 16 of the Constitution of India. Introduction of the type test is also within the scope of paragraph 65.4 from judgment of the Apex Court in the case of **Tej Prakash Pathak** (*supra*). We, therefore, do not find any merit in the original application/ writ petition.

25. The writ petition is dismissed.

26. As a consequence of dismissal of the writ petition, the pendency of the OA No. 784 of 2022 would be futile and serve no useful purpose. The same is accordingly dismissed.

27. Urgent Photostat certificate copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Madhuresh Prasad, J.)

I agree.

(Prasenjit Biswas, J.)