

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

BEFORE:

THE Hon'ble Justice Ravi Krishan Kapur

W.P.A. No. 8369 of 2023

West Bengal State Power Engineers
Association & Ors.

Vs.

The West Bengal State Electricity
Distribution Company Ltd. & Ors.

For the petitioners : Mr. Indrajeet Dasgupta, Advocate
Mr. Gourab Maiti, Advocate

For the private respondent : Mr. Soumya Majumder, Advocate
Ms. Sanjukta Dutta, Advocate

For the WBSEDCL : Mr. Jaydip Kar, Advocate
Mr. Debanjan Mukherjee, Advocate

Heard on : 14.05.2026

Judgment on : 24.06.2026

Ravi Krishan Kapur, J.:

1. The challenge in this writ petition is directed against the selection process of promotion from the post of Deputy Chief Engineer and Superintending Engineer (SE) to Additional Chief Engineer (ACE) published on 4 November, 2022 by the West Bengal State Electricity Distribution Company Limited (WBSEDCL). The petitioners are all members of West

Bengal State Power Engineers Association and assail the above selection process seeking fresh selection for promotion in terms of the Promotion Policy, 2010.

2. It is contended that the manner in which the respondent authorities have conducted the impugned selection process is fraught with gross irregularities and arbitrariness. There has been no adherence with the Promotion Policy, 2010 of WBSEDCL. Upon receipt of their respective call letters, the petitioner nos. 2 to 6 had appeared for the interview where 52 candidates had been interviewed at an average of six minutes. The results of such selection were declared on the same day and a number of candidates were superseded. The entire allocation of 75 marks for *viva voce* smacks of arbitrariness. There has also been no adherence to the provisions of the West Bengal Schedule Castes and Schedule Tribes (Reservation of Vacancies in Services and Posts) Act, 1976. In such circumstances, the entire selection process is vitiated, contrary to law and is liable to be set aside. In support of such contentions, the petitioners rely on *Nishi Maghu & Ors. V. State of J& K* (1980) 4 SCC 95, *Ajay Hasia & Ors. V. Khalid Mujib Sheravardi & Ors.* (1981) 1 SCC 722, *Miss Arati Sapru & Ors. V. State of J&K & ORS.* (1981)2 SCC 484, *Deba Prasad Mokhopadhyay v. UBI & Ors.* (1996) 2 CHN 552 and *Indian Council for Agricultural Research & Ors. V. Sundara Raju* (2011) 6 SCC 605.
3. On behalf of the WBSEDCL, it is contended that the Promotion Policy referred to by the petitioners is inapplicable to the post of Additional Chief

Engineer (ACE). The assessment for promotion was on 100 marks out of which 75 marks were for *viva voce* and 25 marks were performance based on the average of the last three years. The qualifying marks were capped at 60. Attendance is not required to be taken into consideration since the post is of a very high level. The practice which has been followed by the WBSEDCL has been the consistent and long standing practice followed for promotion. The ratio of vacancy was 1:4 for General and 1:5 for SC and ST. Following the previous practice of WBSEDCL, a Note Sheet containing promotional proposals is required to be filed for filling up the vacancies and a panel prepared in respect thereof. The proposal was based on current vacancy as well as projected vacancy which would occur in the next one year. The proposal was approved by the Chairman and Managing Director on 21 October, 2022. Subsequently, the said proposal was given effect by holding a suitability test and through performance of appraisal. The marks obtained by successful candidates were tabulated and the panel for promotion was thereafter published.

4. There were 52 candidates interviewed. As per the gradation list, against 11 vacancies out of which around 42 candidates were called as per an approved ratio of 1:4 for all candidates and the remaining 8 candidates belong to SC and ST category beyond 1:4 but within 1:5 as per the West Bengal Schedule Castes and Schedule Tribes (Reservation of Vacancies in Services and Posts) Act, 1976. Ultimately, 12 candidates were empanelled considering the project retirement of one of the empanelled candidates during the period of 1 November, 2022 to 31 October, 2023. In such

circumstances, there is no infraction of any of the Rules in carrying out the impugned selection process and the writ petition is liable to be dismissed. In support of such contentions, the respondents rely on *Lila Dhar vs. State of Rajasthan and Others* (1981) 4 SCC 159 (Pr. 6,8,9), *Pranav Verma and Others vs. Registrar General Of The High Court Of Punjab and Haryana at Chandigarh and Another* (2020) 15 SCC 377 (Pr. 24), *Ramjit Singh Kardam and Others vs. Sanjeev Kumar And Others* (2020) 20 SCC 209 (Pr. 46,47), *Commissioner Of Police vs. Raj Kumar*, (2021) 8 SCC 347 (Pr. 28 to 31), *Union Of India Through Its Secretary And Others vs. Major General Monomoy Ganguly* (2018) 9 SCC 65. (Pr. 43 to 45), *Sarat Chandra Dash and Others vs. Biswajit Patnaik and Others* 1995 Supp (1) SCC 434 (Pr. 8), *Orissa Small Industries Corp. Ltd. and Others vs. Narasingha Charan Mohanty And Others* (1999) 1 SCC 465. (Pr. 3), *Air Commodore Naveen Jain vs. Union Of India And Others* (2019) 10 SCC 34. (Pr. 23) and *Pradeep Kumar Rai And Others vs. Dinesh Kumar Pandey And Others*. (2015) 11 SCC 493 (Pr. 17,21).

5. Promotion to a selection post is not a vested right. The only right available to a government or public sector employee is the right to be considered for promotion. Article 16 of the Constitution guarantees no more. The concept of promotion not only covers advancement to a higher position or rank but also implies advancement to a higher grade. By its very nature, it must be discretionary and the prerogative of an employer must be preserved. To this extent, promotion is a management function and the scope of

interference is restricted to gross arbitrariness, victimization or malafides. (*Brooke Bond India (P) Ltd. v. Workmen* AIR 1966 SC 668). In *Indian Airlines Corp vs. Capt. KC Shukla* (1993) 1 SCC 17 has been held as follows:

*"2. Whether the decision of the High Court is well founded on various aspects shall be examined presently but the alternative relief granted by the High Court probably in an anxiety to be fair and just to those others who had been selected by reducing the interview percentage to 12.5 per cent then working out proportionally the marks obtained by respondent on ACR evaluation and interview and directing to promote him as by this method he would secure the minimum required cannot be accepted as proper exercise of jurisdiction under Article 226. **Adjusting equities in exercise of extraordinary jurisdiction is one thing but assuming the role of selection committee is another. The Court cannot substitute its opinion and devise its own method of evaluating fitness of a candidate for a particular post. Not that it is powerless to do so and in a case where after removing the illegal part it is found that the officer was not promoted or selected contrary to law it can issue necessary direction. For instance a candidate denied selection because of certain entries in his character roll which either could not be taken into account or had been illegally considered because they had been expunged the Court would be within jurisdiction to issue necessary direction. But it would be going too far if the Court itself evaluates fitness or otherwise of a candidate, as in this case.**"*

(emphasis added)

6. Ordinarily, the Writ Court would not investigate nor judge the skills of the candidates nor go into the aspect of the verification of marks obtained by a candidate since the jurisdiction under Article 226 is an adjudicatory jurisdiction and not an investigative jurisdiction. It is for the interviewing body to choose an appropriate or suitable method for marking. The Writ Court does not sit over the methods of marking employed by the interviewing bodies unless it is proven or is obvious that the markings are a result of malafides or for extraneous purposes. (*Pranav Verma and Ors vs Registrar General of High Court of Punjab and Haryana* (Supra) and *Ramjit Singh Kardam & Ors vs Sanjeev Kumar and Ors* (Supra). In *Lila Dhar vs. State of Rajasthan* (Supra) it has been held as follows:

"6. Thus, the written examination assesses the man's intellect and the interview test the man himself and "the twain shall meet" for a proper selection. If both

written examination and interview test are to be essential features of proper selection, the question may arise as to the weight to be attached respectively to them. In the case of admission to a college, for instance, where the candidate's personality is yet to develop and it is too early to identify the personal qualities for which greater importance may have to be attached in later life, greater weight has per force to be given to performance in the written examination. The importance to be attached to the interview-test must be minimal. That was what was decided by this Court in *Periakaruppan v. State of Tamil Nadu* [(1971) 1 SCC 38 : (1971) 2 SCR 430] , *Ajay Hasia v. Khalid Mujib Sehravardi* [(1981) 1 SCC 722; 1981 SCC (L&S) 258 : AIR 1981 SC 487] and other cases. On the other hand, in the case of services to which recruitment has necessarily to be made from persons of mature personality, interview test may be the only way, subject to basic and essential academic and professional requirements being satisfied. To subject such persons to a written examination may yield unfruitful and negative results, apart from its being an act of cruelty to those persons. There are, of course, many services to which recruitment is made from younger candidates whose personalities are on the threshold of development and who show signs of great promise, and the discerning may in an interview-test, catch a glimpse of the future personality. In the case of such services, where sound selection must combine academic ability with personality promise, some weight has to be given, though not much too great a weight, to the interview-test. There cannot be any rule of thumb regarding the precise weight to be given. It must vary from service to service according to the requirements of the service, the minimum qualifications prescribed, the age group from which the selection is to be made, the body to which the task of holding the interview-test is proposed to be entrusted and a host of other factors. It is a matter for determination by experts. It is a matter for research. It is not for courts to pronounce upon it unless exaggerated weight has been given with proven or obvious oblique motives. The Kothari Committee also suggested that in view of the obvious importance of the subject, it may be examined in detail by the Research Unit of the Union Public Service Commission.

8. The second ground of attack must fail for the same reason as the first ground of attack. The Rules themselves do not provide for the allocation of marks under different heads at the interview-test. The criteria for the interview-test has been laid down by the Rules. It is for the interviewing body to take general decision whether to allocate marks under different heads or to award marks in a single lot. The award of marks under different heads may lead to a distorted picture of the candidate on occasions. On the other hand the totality of the impression created by the candidate on the interviewing body may give a more accurate picture of the candidate's personality. It is for the interviewing body to choose the appropriate method of marking at the selection to each service. There cannot be any magic formulae in these matters and courts cannot sit in judgment over the methods of marking employed by interviewing bodies unless, as we said, it is proven or obvious that the method of marking was chosen with oblique motive.

9. Both the cases cited before us *Periakaruppan* case [(1971) 1 SCC 38 : (1971) 2 SCR 430] and *Ajay Hasia* case [(1981) 1 SCC 722; 1981 SCC (L&S) 258 : AIR 1981 SC 487] were cases of admission to colleges. We have already pointed out that the provision for marks for interview-test need not and cannot be the same for admission to colleges and entry into public services. In fact in *Periakaruppan* case [(1971) 1 SCC 38 : (1971) 2 SCR 430] , even in the case of college admissions the Court observed: (SCC p. 44, para 15)”

7. In view of the above, the composite scheme and practice adopted by the WBSEDCL based on past performance assessment and a suitability

interview component is recognized and judicially endorsed as a method of assessing merit for the selection for the post of ACE. The internal apportionment between this two heads is a matter of administrative policy and does not *per se* violate any constitutional provision. There is no infraction in following an established set of service and promotion Rules and Guidelines by an employer in all organizations in order to maintain equality and parity in pay scale, promotion, gradation of the employees.

8. There is no merit in the challenge of maintainability. The petitioners claim to be a members of an association and are aggrieved by the selection process for promotion. Regardless of whether any individual member being aggrieved by the decision of the association or whether some of the members of the association have already been selected or promoted, there is nothing to demonstrate that there is any objection raised by any of the individual members of the association which would justify dismissal of the writ petition.
9. In the marking scheme adopted by WBSEDCL, the total marking scheme i.e. 75 marks for the interview and 25 marks based on the past 3 years progress of the candidate does not justify any interference. The dispute is at the highest as to how 15 marks are to be counted or whether the test should be held on 85 marks. In any event, the petitioners themselves have been promoted on the criteria of suitability having 60 marks. This had not been objected to by the petitioners. WBSEDCL being an employer is in the best position having knowledge and experience in the field to determine suitability in marking and evaluating the question of capability. Mere

seniority does not entitle a candidate to a right of promotion when the conditions for the promotion is laid down as merit cum seniority. (*Bihar State Electricity Board and Ors. vs. Dharamdeo Das* 2024 SCC OnLine SC 1768).

10. Where promotion is by seniority, merit takes the second place but when selection is based on merit cum seniority, merit takes the first place and it is implicit in such selection that the employee must not be just average. (*Janki Prasad Parimoo vs State of J & K*, (1973) 1 SCC 420). Where the criteria is merit and suitability over seniority, and it is found upon evaluation that a junior satisfies the required merit criteria, the junior may be considered as suitable for the post and seniority shall have no role to play in such circumstances. In such cases, the merit of the candidate overrides the aspect of seniority. Hence in the present case, the merit of the junior candidates cannot be questioned nor can the same be a ground for interference.
11. The indisputable facts reveal that the petitioners were considered eligible for participation in the promotion process and accordingly the petitioners were called for the same. The petitioners willingly participated in the proceeding without raising any dispute against the process of selection. In fact, the petitioners themselves were promoted earlier on the basis of the 60 marks which had been allocated for suitability without any objection. In such circumstances, the petitioner cannot now be heard to say that there has been any objectionable modification of the existing scheme by addition of 15 marks for suitability.

12. Once a person has participated in an interview, accepting all norms and conditions, a candidate is estopped from turning around and subsequently challenging the process. The petitioners knowingly benefitted from the very process which they now seek to challenge as discriminatory. It is well settled that a candidate who appears at the selection process and takes a chance of being selected without any protest cannot subsequently challenge the validity of the very same process merely because the results are not in his or her favour. It is true that an employee has a right to be considered for promotion. However, such consideration does not automatically entitle the employee the right to be promoted. All of the eligible candidates named in the list were interviewed and considered for the promotion process and the same does not entitle them to be promoted merely on the ground of seniority. In this context, the allegation of scoresheet manipulation is vague, unsubstantiated and bereft of particulars. The scoresheet analysis is an invitation to do precisely what the law forbids. It is well settled that the Writ Court does not reassess the wisdom in the marking scheme for any selection post. (*Air Commodore Naveen Jain vs Union of India and Ors.*, (*Supra*) and *Pradeep Kumar Rai vs Dinesh Kumar Pandey*, (*Supra*).
13. There is also no merit in the contention that the Promotion Policy of 2010 is applicable to the facts and circumstances of the case or that there has been any violation thereof. The post of ACE being the second highest post in the Engineering Cadre falls within the category of the selection post where merit is the predominant if not the exclusive consideration. The

Carrier Progression Scheme has also not been violated inasmuch the same applies to time bound promotions and not to vacancy based selection process such as the ACE. Promotion to the post of Additional Chief Engineer has proceeded on the long standing practice of WBSEDCL.

14. To this extent any reliance on the decision in *Ajay Hasia vs. Khalid Mujib Serawardi* (Supra), *Nishi Maghu & Ors v State of J&K* (Supra) and *Miss Arati Sapru & Ors. Vs State of J & K Ors* (Supra) are distinguishable. All these decisions concerned admissions to professional medical courses or entry level recruitment where the interview is a one time, first point assessment of largely undifferentiated candidates. This is inapposite to promotion for a senior selection post within a cadre where candidates have established service records and forms an independent and substantial component of assessment.
15. There is also no merit in the contention that promotion was based purely on the strength of a brief interaction. On the contrary, the same is an informed decision based on the candidate's service record, ACR and prior assessment which is best left to the wisdom of the employer. In the absence of any framed statutory policy and considering the long standing practice of WBSEDCL for promotion to the said post there is no ground to interfere with the impugned selection process. (*Union of India through its Secretary and others vs. Major General Monomoy Ganguly* (Supra), *Sarat Chandra Dash and others vs. Biswajit Patnaik and Others* (Supra) and *Orissa Small Industries Corp. Ltd. and others vs. Narasingha Charan Mohanty and others* (Supra).

16. The petitioners claim that the zone of consideration was wrongly fixed at 1:4/1:5 instead of a composite 1:5 zone of 55 candidates rests on an incomplete reading of the statutory scheme. Under the West Bengal Scheduled Caste and Scheduled Tribe (Reservation of Vacancies in Services and Posts) Act, 1976, and the 1976 Rules, read with the 50-point roster under section 5 and Schedule II, it is the vacancy, not the post which is reserved. The separate 1:4 (unreserved) and 1:5 (reserved) ratios applied by the respondents are merely the roster mechanism in operation, not a departure from it. Moreover, none of the petitioners belong to the SC/ST category or have been individually prejudiced by this fixation; the grievance is raised on behalf of unnamed third parties who are not before this Court and have made no complaint of their own.
17. The contention that juniors systematically scored higher and that this implies manipulation is untenable. The records demonstrate the same pattern in 2019, 2020, and 2021 i.e. of juniors superseding seniors is routine in a merit-based process and does not indicate foul play. Significantly, the petitioner no. 6, was himself promoted in 2023 under the same principle and now faces a separate challenge to that very promotion. In view of the fact that 12 candidates have already been promoted pursuant to the impugned process and one of them, the respondent no. 11, has since superannuated, any direction quashing the entire panel as prayed for by the petitioners would cause serious and irreparable prejudice on third parties who have not been found to be guilty of any

wrongdoing. In *Commissioner of Police vs. Raj Kumar (Supra)* it has been held as follows:

31. *Public service — like any other, presupposes that the State employer has an element of latitude or choice on who should enter its service. Norms, based on principles, govern essential aspects such as qualification, experience, age, number of attempts permitted to a candidate, etc. These, broadly constitute eligibility conditions required of each candidate or applicant aspiring to enter public service. Judicial review, under the Constitution, is permissible to ensure that those norms are fair and reasonable, and applied fairly, in a non-discriminatory manner. However, suitability is entirely different; the autonomy or choice of the public employer, is greatest, as long as the process of decision-making is neither illegal, unfair, or lacking in bona fides.*

18. For the above reasons, there is no merit in the writ petition and the same stands dismissed. WPA 8369 of 2023 stands disposed of.

(Ravi Krishan Kapur, J.)