

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 26678 of 2014

Suvra Banerjee

Vs.

State of West Bengal & Ors.

For the Petitioner

: Mr. Biswarup Ray
: Mr. Gazi Faruque Hossain
: Ms. Varsha Roy

For the State

: Mr. Pinaki Bhattacharyya
: Mr. Kaustav Chatterjee

For the WBCSSC

: Dr. Sutanu Kumar Patra
: Ms. Supriya Dubey

For the respondent No. 6

: Mr. Shuvanil Chakraborty
: Ms. Chandana Ghosh

Judgment on

: 10.06.2026

Uploaded on

: 10.06.2026

Rai Chattopadhyay, J. :-

- 1) The writ petitioner has challenged in this case an order passed by the Secretary, West Bengal Central School Service Commission [herein after referred to as "the WBCSSC"], dated July 1, 2014 and sought for setting aside of the same. Her other prayer is to direct the respondent to recommend her name for appointment to the post of assistant teacher in computer application, in Honours/Post Graduate category, pursuant to her result in 12th Regional Level Selection Test [herein after referred to as "12th RLST"] conducted by the WBCSSC for Southern Region.

- 2) The petitioner has stated inter alia that she applied and appeared in 12th RLST held on July 29, 2012. In the relevant subject, that is 'Computer Application', there were 8 vacant posts for the general category candidates amongst which 2 were reserved for the female candidates. The petitioner has stated that in the vacancy notification nothing was mentioned with regard to reservation for 'in service' candidates, that is, for the temporary teachers.
- 3) After being qualified in the written examination, the petitioner was called for to take part in the 'Personality Test', which she has attended on September 4, 2013.
- 4) Thereafter a 'Combined Merit List' of subject 'Computer Application' for Southern Region was published, in which the writ petitioner was placed at 12th position. Her grievance is that in spite of her position in the 'Combined Merit List', which evidently showed that she should be within the zone of consideration, for being recommended for appointment, she has never been called for counselling. Instead, the person at 17th position in the 'Combined Merit List', that is the added respondent No.6 in this writ petition, who was a general category/untrained/in-service temporary teacher, has been called for counselling and ultimately has been recommended by the Commission for appointment, allegedly superseding the writ petitioner.
- 5) The first writ petition of the present petitioner followed thereafter, being W.P. No. 822 (w) of 2014, in which the Court has directed the Secretary, WBCSSC, vide the order dated May 7, 2014, to consider the petitioner's grievance and pass a reasoned order. The resultant order is that dated July 1, 2014, which is impugned in the instant writ petition.
- 6) In the said impugned order dated July 1, 2014, the Secretary, WBCSSC/respondent No.3 has held inter alia that the 'Combined Merit List' is not the 'panel' of successful candidates for appointment and place of a candidate in the 'Combined Merit List' is not the determining factor for empanelment, counselling and recommendation; it has held

that empanelment depends on gender and medium wise number and category of vacancies, as provided under the West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Teachers) Rules 2007 as amended in 2011; it has been further held that reservation of post was made for ‘in service’ temporary teachers following the Government notifications published from time to time, over and above reservation allotted for the SC, ST, OBC-A, OBC-B and PH category candidates; that recommendation of a male candidate at a girl’s school was prohibited. That, following all paraphernalia as provided in 2007 Rules (amended in 2011), the ‘panel’ has been prepared strictly in order of merit; the respondent has mentioned in the said impugned order that candidates are recommended from the ‘panel’ and not from the ‘Combined Merit List’. Hence it is stated that the petitioner’s allegation is due to her misconception.

- 7)** So far as the petitioner’s position in the ‘Combined Merit List’ is concerned the said respondent has mentioned in the impugned order that she is a general, Honours/Post Graduate category candidate in subject “Computer Application”, for Bengali medium school. In that segment candidates only up to 7th position in the ‘Combined Merit List’ have been called for counselling and not beyond. Therefore, allegation of supersession of the petitioner by any candidate in the segment ranked bellow her, has been denied by the respondent authority.
- 8)** In the impugned order the respondent has further mentioned that in 12th RLST when both the empaneled and wait listed candidates are exhausted, then only the candidates in the ‘Combined Merit List’, placed bellow them have been called for counselling, strictly in order of merit; that, trained candidates have been called for counselling first and after exhaustion of the trained candidates the untrained candidates have been called for counselling; that in preparation of panel 100 point roaster has been duly followed.
- 9)** The respondent authority has stated in the impugned order that the respondent No.6 has been called for counselling and

subsequently appointed in a reserved category seat as she has been an 'in service' temporary teacher; therefore she belonged to a different category altogether from that of the present petitioner; hence she cannot be stated to have superseded the writ petitioner in any way.

- 10)** In this way the respondent authority has addressed grievance of the writ petitioner, in the said impugned order.
- 11)** Mr. Biswarup Ray, learned advocate has represented the petitioner. The argument put forth by him for the petitioner inter alia is that the impugned order dated July 1, 2014, is a result of non-application of mind by the respondent authority and the same is only a mechanical order. That, instead the respondent authority should have considered the inherent illegality and arbitrariness in its action to discriminate and deprive the petitioner from her legitimate claim of being called for counselling and being appointed, in view of her position in the merit list. It is submitted that as per the vacancy notification there was no other reservation, than reservation of two posts for the female candidates. Therefore, the reasons shown by the respondent authority in the said impugned order should be considered as unsustainable being baseless and unfounded. That the respondent ought to have considered that the petitioner being the female candidate of general category has been the second amongst the female candidates in the 'Combined Merit List' and thus was entitled to be called for counselling.
- 12)** It is submitted that appointment of the respondent No.6 is bad in law in so far as she is not a candidate qualified in terms of the vacancy notification and her position in the 'Combined Merit List'. The entire process of appointment has been challenged stating the same to be incoherent, irrational and not in accordance with the law. The petitioner has also alleged that the acts of the respondent authority in declining her prayer to take part in counselling on the basis of her position in the 'Combined Merit List' and in view of the vacancy notification particularly the reservation of posts mentioned

therein, has been improper, arbitrary, discriminatory, unfair and unreasonable apart from being grossly illegal.

- 13)** The respondent WBCSSC has been represented by Dr. Sutanu Kumar Patra, learned advocate. He has made arguments largely supporting the reasons shown in the said impugned order. The facts of the case as stated by the writ petitioners are all admitted in this case. Mr. Patra has denied the petitioner's allegation that she has been illegally superseded by a candidate of lower rank than her in the 'Combined Merit List'. He submits that on the basis of the 'Combined Merit List', the 'panel' has been prepared taking care of and giving effect to the gender and medium wise number and category of vacancies, including reservation of post to be secured as per the Government notifications published time to time. For that matter, in the petitioner's segment, the candidates up to 7th position in the 'Combined Merit List' has been called for counselling and not beyond. Hence, he submits that the entire allegation of the petitioner is misconceived and baseless.
- 14)** He further submits that appointment of respondent No.6 is as against the reserved category of post for the subject, allotted for 'in service' temporary teachers. That the petitioner belonging to different category altogether, has erroneously perceived discrimination allegedly made against her, where the respondent was duty bound to give effect to the Government notification for reservation of post for 'in service' temporary teachers.
- 15)** In this regard he has pointed out to page 25 of the writ petition, which is a document of the respondent authority to rely on the following noted there:
- "Note: 10% of the Additional Vacancy is reserved for Inservice (Temporary) Teachers".*
- 16)** The added respondent No.6, represented by Mr. Shuvranil Chakraborty, learned advocate has emphasized as to how the additional posts created by the notification of the School Education Department, are considered to be included amongst the vacant posts declared by the respondent authority. In this

regard learned advocate has relied on notification No. 1584-SE(S)/1A-01/09(Pt) dated December 21, 2011.

- 17)** Another notification No. 1585-SE(S)/ES/S/1S-26/2010(Part) dated December 21, 2011, has also been referred to by the respondent No.6 and the following portion thereof to suggest as to how her candidature has been rightly and properly considered by the respondent authority, in terms of the notification;

“Note 3.— Only those Candidates serving as Part-Time Teacher/Para-Teacher/Contractual-Teacher/ Assistant Teacher duly approved by the competent authority (by whatever name known) in any Junior High/High School/Higher Secondary School recognized by the West Bengal Council of Higher Secondary Education, West Bengal Board of Secondary Education or equivalent or a Samprasarak/Samprasatika/Mukhya Samprasarak/Samprasatika in MSK or Shikha Mitra in Rabindra Mukta Vidyalaya or a Special Educator under PBSSM will be eligible to get the facility as laid down in item no. (ii) of Section C of Part C of Schedule II of the said rules provided that, the candidate has to continue his/her service till the date of application. The marks in this clause to be calculated as per his/her experience in continuous service on the last date for his/her application against the advertisement for the selection of Assistant Teacher by the School Service Commission of that respective year. Final recommendation will be issued by the concerned Regional School Service Commission subject to the verification from the District Inspector of Schools or DPO or DP & RDO or DNO or any other competent authority concerned. Any adverse report from the District Inspector of Schools (SE) concerned must be liable to the cancellation of his/her candidature at that point of time.”

- 18)** The respondent authority and the respondent No.6 are ad-
idem to state that the declared vacancy included the additional posts created vide the notification No. 1584-SE(S)/1A-01/09(Pt) dated December 21, 2011. And also that 10% thereof would be considered as reserved for ‘in service’ temporary teachers as per the notification No. 1585-SE(S)/ES/S/1S-26/2010(Part) dated December 21, 2011. In this regard they have urged that the contention of the writ

petitioner that “10% Additional Posts” mentioned in the document of the respondent authority at page.25 of the writ petition, have to be additional posts created if any, during the selection process and not otherwise, may be discarded as not maintainable.

- 19)** Having heard the learned advocates for the parties and upon consideration of the materials placed on record, this Court finds that the central controversy in the present writ petition revolves around the true import and effect of Notification No. 1585-SE(S)/ES/S/1S-26/2010(Part) dated December 21, 2011 and whether the vacancies declared in the selection process were to be construed as inclusive of the additional posts created under Notification No. 1584-SE(S)/1A-01/09(Pt) dated December 21, 2011. The ancillary issue is whether 10% reservation for in-service temporary teachers was liable to be carved out from such declared vacancies.
- 20)** The petitioner has stated that the vacancy position disclosed in the recruitment notification was exhaustive and immutable and that no reservation for in-service temporary teachers could have been applied in absence of express specification in the vacancy notification itself. Such contention, however, overlooks the statutory and administrative framework governing the selection process conducted by the West Bengal Central School Service Commission. The recruitment process cannot be viewed in isolation from the Government notifications operating in the field at the relevant point of time, particularly when such notifications form part of the governing policy regulating the mode and manner of preparation of panel and reservation of vacancies.
- 21)** It appears from the materials on record that Notification No. 1584 dated December 21, 2011 created additional posts in the concerned category. Simultaneously, Notification No. 1585 dated December 21, 2011 specifically provided that 10% of the additional vacancies would stand reserved for in-service temporary teachers. The expression “Additional Vacancy” appearing in the note relied upon by the respondents cannot be interpreted in the narrow and restrictive manner, sought to be advanced by the writ petitioner, so as to confine its

meaning only to vacancies arising subsequent to commencement of the selection process. Such interpretation would defeat the very object of the policy decision embodied in Notification No. 1585.

- 22)** The language employed in the notifications, read harmoniously and purposively, unmistakably demonstrates that the additional posts created under Notification No. 1584 became part of the total vacancy strength available for recruitment and consequently attracted the reservation contemplated under Notification No. 1585. Once the newly created posts stood integrated with the declared vacancy structure for the purpose of recruitment, reservation of 10% thereof for in-service temporary teachers became a mandatory consequence flowing from the Government policy itself. The respondent authorities, therefore, cannot be faulted for treating the declared vacancies as inclusive of the posts created under Notification No. 1584 and thereafter earmarking 10% thereof for in-service temporary teachers.
- 23)** This Court also finds substance in the contention of the respondent authorities that the “Combined Merit List” by itself does not confer an indefeasible or vested right to appointment. The combined merit position merely determines inter se merit amongst candidates, whereas the actual preparation of panel and recommendation necessarily depend upon several statutory variables including category-wise reservation, gender-wise distribution, medium-wise allocation and other reservations mandated by Government notifications. The petitioner’s reliance solely upon her position in the “Combined Merit List”, therefore, is misplaced.
- 24)** The materials on record further disclose that respondent no.6 belonged to the category of in-service temporary teachers and her candidature was considered against a reserved vacancy earmarked for such category pursuant to Notification No. 1585. The petitioner admittedly did not belong to such reserved category. Consequently, comparison between the petitioner and respondent no.6 is legally impermissible and impossible too, as candidates belonging to distinct reservation categories cannot claim parity for the purpose of appointment

against posts considered to be reserved for the ‘ in service’ temporary teachers. The concept of equality enshrined under Article 14 of the Constitution is one of equals being treated equally and not unequals being treated alike. Once the State creates a valid classification founded upon intelligible differentia and having nexus with the object sought to be achieved, candidates falling outside such classification cannot complain of hostile discrimination. The reservation extended in favour of in-service temporary teachers was based upon a conscious policy decision of the Government and the same cannot be diluted merely because a candidate of another category secured higher position in the combined merit list. Merit has to operate within the framework of the applicable reservation policy and cannot override a legally sanctioned classification. Therefore, the petitioner’s allegation of supersession by respondent no.6 is misconceived both on facts and in law.

- 25)** The Courts are required to construe administrative notifications in a manner which advances the object sought to be achieved rather than frustrates the same by adopting an unduly literal or restrictive interpretation, hence, purposive interpretation is the key and also supports the stand of the respondent authority. Notification No. 1585 was evidently issued to extend limited protective reservation to in-service temporary teachers in respect of the additional posts created by the Government. The construction suggested by the petitioner would render the notification otiose and ineffective, which is impermissible in law. A statutory or administrative instrument must be read in a manner so as to give meaningful effect to every part thereof and not in a manner which would make any portion redundant or unworkable. The interpretation advanced by the respondents, therefore, preserves the efficacy and operational intent of both Notifications No. 1584 and 1585 and harmonises them within the recruitment framework.
- 26)** It is equally well settled that judicial review in matters of selection and recruitment is confined to examining illegality, arbitrariness, mala fide or procedural impropriety. The Court does not sit as an appellate authority over administrative

decisions taken in accordance with applicable rules and policy notifications. Unless the action of the authority is shown to be patently contrary to law or actuated by arbitrariness, interference under Article 226 of the Constitution is unwarranted.

- 27)** In the present case, this Court does not find any manifest illegality in the action of the respondent authorities in treating the declared vacancies as inclusive of the newly created posts under Notification No. 1584 and thereafter reserving 10% thereof for in-service temporary teachers in terms of Notification No. 1585. The impugned order dated July 1, 2014 reflects due consideration of the petitioner's grievance and discloses cogent reasons in support of the decision arrived at therein. The petitioner has failed to establish violation of any statutory provision or infringement of any enforceable legal right.
- 28)** For the reasons aforesaid and applying the doctrinal principles governing purposive interpretation of administrative notifications, limited scope of judicial review in recruitment matters, and the settled principle that inclusion in a merit list does not create an indefeasible right to appointment, this Court finds no merit in the writ petition.
- 29)** Accordingly, the writ petition stands dismissed. The impugned order dated July 1, 2014 passed by the Secretary, West Bengal Central School Service Commission is affirmed. There shall, however, be no order as to costs.
- 30)** Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)