

In The High Court at Calcutta

In The Circuit Bench at Jalpaiguri

Constitutional Writ Jurisdiction

Appellate side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 2167 of 2023

Inul Mia & Ors.

Versus

The State of West Bengal & Ors.

With

WPA 2434 of 2023

Razzak Hussain & Ors.

Versus

The State of West Bengal & Ors.

For the petitioners

**: Mr. Narendra Nath Das
Mr. Gobinda Chandra Roy
Mr. Debojit Kundu
Mr. Pragyadip Roy Basunia
Mr. Jagesh Ch. Roy
Mr. Debojyoti Roy**

**.....in WPA
2167 of 2023**

**Mr. Kunaljit Bhattacharjee
Mr. Alok Sah
Ms. Debopriya Ghosh**

**.....in WPA
2434 of 2023**

For the PSC

**: Mr. Arjun Chowdhury
Ms. Riya Agarwal**

**.....in WPA
2167 of 2023 &
WPA 2434 of 2023**

For the State

**: Mr. Hirak Barman
Mr. Momenur Rahman**

.....in WPA
2167 of 2023

Mr. Hirak Barman
Mr. Pretom Das

.....in WPA 2434 of 2023

Judgment reserved on : 02.03.2026

Judgment delivered on : 06.03.2026

SHAMPA DUTT (PAUL), J. :

1. The writ application has been preferred praying for direction upon the respondent authority to re-advertise by inclusion of exempted category (land losers) and thereby set aside the advertisement no. 04/2023 dated 22.08.2023.
2. It is the case of the petitioners that they are unemployed and are enlisted as exempted category under notification no. 303-EMP/IM-10 /2000 dated 21.08.2002 rule 3 under the scheme of land loser. The recruitment process of these petitioners is guided under the West Bengal Regulation of Recruitment in State Government Establishments and Establishments of Public Undertaking, Statutory Bodies, Government Companies and Local Authorities Act, 1999, as exempted category. The procedure for declaring the petitioners as exempted category under land loser family is vide notification no. 303-EMP/1M-10/2000 dated 21.08.2002.

3. It is further stated by the petitioner that the respondent no. 2, being the West Bengal Public Service Commission has notified for the requirement for the post of Sub-inspector in the Sub Ordinate Food & Supplies Service, Grade 3 under the Food & Supply Department, Government of West Bengal 2002 vide their advertisement no. 04/2023 dated 22.08.2023 for total 480 posts.
4. These posts are classified in 11 categories in terms of Labour Department notification no. 50-EMP/1M-25/98 dated 01.03.2011, **excluding exempted category**. The commission has also notified stating that **EWS category is not included in this advertisement, as the vacancies are reported by the department is up to 31.12.2022, which is prior to issuance of Labour Department Notification No. 18-Emp(EC)/Labr.-27011(20)/1/2020-EC dated 07.02.2023 in this regard.**
5. It is the further case of the petitioner that the scheme of exempted category was introduced long before 2023 and the process for their selection and enlistment under the directorate of employment exchange has been laid down vide notification no. 303-EMP/1M-10/2000 dated 21.08.2002. Later the 100-point roster with regard to employment has been modified in terms of a series of acts from time to time and finally on 01.03.2011 vide

employment notification no. 50-Emp/1M-25/98 dated 01.03.2011.

- 6.** It is stated that in compliance of West Bengal Regulation of Recruitment in State Government Establishments and Establishments of Public Undertaking, Statutory Bodies, Government Companies and Local Authorities Act, 1999, the West Bengal Staff Selection Commission had introduced another selection process by inclusion of Advertisement vide exempted category 01/WBSSC/2014 for the year 2014 for 1131 posts, under the recruitment process of the West Bengal Services (Appointment, Probation and Absorption of Group 'C' Employees) Rules, 2013 issued under Finance Department Notification No. 1832-F (P) dated 01.03.2013, including the exempted category.
- 7.** Thus the action of the respondent authority including the West Bengal Public Service Commission, for non-inclusion of exempted category, on the ground of want of notification, before 07.02.2023, is arbitrary, mechanical and discriminatory under article 16 of the Constitution of India.
- 8.** The petitioners have now prayed for modification of the advertisement and for publishing a fresh advertisement.
- 9.** Affidavits have been exchanged in the present case by the parties herein, wherein the answering respondent being the

respondent no. 2 & 3, in their affidavit-in-opposition, being the Public Service Commission have stated that the petitioners have averred that the recruitment process of the petitioners being under the exempted category as land losers is guided under the West Bengal Regulation of Recruitment in State Government Establishments of Public Undertakings, Statutory Bodies, Government Companies and Local Authorities Act, 1999. However **Sub-section 4 of Section 1 of the said Act categorically specifies** that the application of the said legislation shall operate on all posts in state government establishments and establishments of Public Undertakings, Statutory bodies, Government companies and Local authorities, **other than** the posts which are required to be filled up either on the recommendations of (a) **The Public Service Commission, West Bengal**, or (b) The West Bengal College Service Commission constituted under The West Bengal College Service Commission Act 1978, or (c) The West Bengal Regional School Service Commission constituted under the West Bengal School Service Commission Act 1997, in respect of any of the **regions** referred to in sub-section 2 of section 3 of the said Act or (d) any Municipal Service Commission constituted under any law for the time being in force, or (e) the Cooperative Service Commission

constituted under the West Bengal Cooperative Societies Act, 1983.

10. Thus, in view of the statutory provisions of the governing legislation barring any kind of entitlement for the post which are required to be filled up on the recommendation of the Public Service Commission, West Bengal, the petitioners are not entitled to apply for the said posts under the exempted category as a land loser.
11. It is further stated that the Public Service Commission, West Bengal, in no way, is associated with the Staff Selection Commission, as the Public Service Commission, West Bengal, is a constitutional body established under Article 315 of the Constitution of India and has no connection or association whatsoever with the Staff Selection Commission, which is a statutory body constituted under the West Bengal Staff Selection Commission act, 2011. Furthermore, **subsection 3 of section 6 of the West Bengal Staff Selection Commission Act, 2011 clearly specifies that the provisions of section 6 shall not apply to direct recruitments to the post or services that are required to be made through the Public Service Commission, West Bengal.**
12. It is further stated that the specifications of persons as exempted category, process of their selections and enlistment

etc. have been laid down vide notification number 301-EMP/1M-10/2000 dated 21.08.2002, 302-EMP/1M-10/2000 dated 21.08.2002.

13. It is further submitted that as per notification no 302-EMP/1M-10/2000 dated 21.08.2002, exempted category vacancies shall not be considered in the recruitment examinations conducted by the Public Service Commission, West Bengal which draws its genesis from Section 1(4) of the West Bengal Regulation of Recruitment in State Government Establishments of Public Undertakings, Statutory Bodies, Government Companies and Local Authorities Act, 1999.
14. It is further submitted that the Public Service Commission, West Bengal, always follows model 100 point roster indicating reservation for SC, ST, OBC, Person with benchmark disability, Ex-servicemen, Meritorious sportsperson and Economically weaker Section category as per notification issued by the Labour department from time to time and in terms of Labour department's notification number 302-EMP/1M-10/2000 dated 21.08.2002, and **filling up of vacancies against exempted category (land losers, dependants of employees dying in harness, dependence of employees retiring incapacitated, etc) is not under the purview of the Public Service Commission.**

15. That the Public Service Commission, West Bengal could not respond to the letters and/or as all the representations of the petitioners individually and as the letters/representations were similar and identical on the issue involved, the Commission uploaded an “important announcement” in its website addressing the grievances of the petitioners and all other similarly circumstanced persons in the following terms, *"consequent upon publication of a number of advertisements for various recruitment examinations by the Public Service Commission West Bengal, lots of applications have been received praying for reservation under exempted category from land losers. In this connection, it is clarified for information of all concern that Public Service Commission West Bengal, always follows the model 100 point roster indicating reservation for scheduled caste scheduled tribe, other backward classes, persons with benchmark disability, ex-servicemen, meritorious sports person and economically weaker section category as per notifications issued by the labour department from time to time. In terms of labour department notification number 302-EMP/IM-10/2000 dated 21.08.2002, filling up of vacancies against exempted category (land losers, dependence of employees dying in harness, dependence of employees retiring incapacitated, etc.) is not under the purview of the Commission."*

16. It is thus submitted that the entire exercise carried out by the Public Service Commission, West Bengal, with regard to the recruitment examination, has been done in conformity and compliance with the extant rules and the laws and there is no violation whatsoever as alleged.
17. In reply, the petitioner has denied the contentions of the said respondents and have further reiterated their case as made out in their writ petition.
18. Both parties have filed their written notes in the present case.
19. The petitioner in their written notes has reiterated as made out in their written complaint and the respondents have made out their case as made out in their affidavit-in-opposition.
20. **On hearing the learned counsels for the parties and on perusal of the materials on record, the following is evident:-**
 - a) The commission has notified that EWS category (land losers) is not included in this advertisement, as the vacancies are reported by the department is up to 31.12.2022, which is prior to issuance of Labour Department Notification No. 18- Emp (EC) /Labr. - 27011 (20) /1 /2020 - EC dated 07.02.2023 in this regard.
 - b) Subsection 3 of section 6 of the West Bengal Staff Selection Commission Act, 2011, clearly specifies that the

provisions of section 6 shall not apply to direct recruitments to the post or services that are required to be made through the Public Service Commission, West Bengal.

- c) That the specifications of persons as exempted category, process of their selections and enlistment etc. have been laid down vide notification number 301-EMP/1M-10/2000 dated 21.08.2002, 302-EMP/1M-10/2000 dated 21.08.2002.
- d) As per notification no 302-EMP/1M-10/2000 dated 21.08.2002, exempted category vacancies shall not be considered in the recruitment examinations conducted by the Public Service Commission, West Bengal which draws its genesis from Section 1(4) of the West Bengal Regulation of Recruitment in State Government Establishments of Public Undertakings, Statutory Bodies, Government Companies and Local Authorities Act, 1999.
- e) The Public Service Commission, West Bengal, always follows model 100 point roster **indicating reservation for** SC, ST, OBC, Person with benchmark disability, Ex-servicemen, Meritorious sportsperson and Economically weaker Section category as per notification issued by the Labour department from time to time and in terms of

Labour department's notification number 302-EMP/1M-10/2000 dated 21.08.2002, and **filling up of vacancies against exempted category (land losers, dependants of employees dying in harness, dependence of employees retiring incapacitated, etc) is not under the purview of the Public Service Commission.**

21. Learned counsel for the petitioners submits that Labour department notification no. 302-EMP/1M-10/2000 dated 21.08.2002 is in addition to other reservation benefits declared for the exempted category of land loser.
22. This Court on considering the various notifications relied upon by the answering respondents herein, is of the view that the **exempted category of land loser** are not entitled to get the benefit of being considered under the exempted category, in the recruitment process, which are required to be filled up, on the recommendations of the Public Service Commission, in view of Sub section 4 of Section 1 of the West Bengal Regulation of Recruitment in State Government establishments of public under takings, statutory bodies, government companies and local authorities act, 1999.
23. Accordingly, this Court finds that the petitioners' case has no merit and as such **no interference** is called for by this Court in the recruitment process initiated by the answering respondents

Public Service Commission, West Bengal in respect of advertisement no. 04/2023 dated 22.08.2023.

- 24. Writ application stands dismissed.**
- 25.** All connected application, if any, stands disposed of.
- 26.** Interim order, if any, stands vacated.
- 27.** Urgent Photostat certified copy of this Judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

[Shampa Dutt (Paul), J.]