

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Saugata Bhattacharyya

FMA 697 of 2025

with

CAN 1 of 2025

Ivana Hossaini

-versus-

State of West Bengal & Ors.

with

MAT 483 of 2025

with

CAN 1 of 2025

Susmita Ghosh

-versus-

State of West Bengal & Ors.

For the Appellants : Mr. Bikash Ranjan Bhattacharya, Ld. Sr. Advocate

Mr. Abhratosh Majumder, Ld. Sr. Advocate

Mr. Firdous Samim, Advocate

Ms. Gopa Biswas, Advocate

Mr. Mainak Ghosal, Advocate

Mr. Hasanuz Zaman Molla, Advocate

Ms. Rajarshree Saha, Advocate

Ms. Ankita Ghosh, Advocate

For the State : Mr. Biswabrata Basu Mallick, Ld. AGP

Mr. Gourav Das, Advocate

Mr. P.B. Mahato, Advocate

For the High Court

Administration

: Mr. Ranjay De, Ld. Sr. Advocate

Mr. Kallol Basu, Advocate

Mr. Basabjit Banerjee, Advocate

Mr. Adityajit Abel Bose, Advocate

For the PSC : Ms. Piyali Sengupta, Advocate
Mr. Victor Chatterjee, Advocate

Hearing concluded on : 19th August, 2025

Judgment on : 19th September, 2025

Saugata Bhattacharyya, J.:

1. Both the appeals are directed against judgments and orders dated 18th March, 2025 passed on two writ petitions being WPA 16722 of 2024 (Ivana Hossaini vs. The State of West Bengal & Ors.) and WPA 14779 of 2024 (Susmita Ghosh vs. The State of West Bengal & Ors.). Learned single judge having found that there is common issue involved in both the writ petitions decided the writ petition being WPA 16722 of 2024 by impugned judgment dated 18th March, 2025 and applying the ratio of Ivana Hossaini (supra) writ petition being WPA 14779 of 2024 was dismissed. Being aggrieved by aforesaid two judgments and orders passed in two separate writ petitions present appeals and connected applications were preferred. Only difference between these two appeals is in FMA 697 of 2025 (Ivana Hossaini vs. The State of West Bengal & Ors.) the appellant is OBC(A) category candidate whereas in appeal being MAT 483 of 2025 (Susmita Ghosh vs. The State of West Bengal & Ors.) the appellant is OBC(B) category candidate in connection with the West Bengal Judicial Service Examination, 2022 which was held for filling up the post of Civil Judge (Junior Division).

2. The appeal being FMA 697 of 2025 will be decided first and the decision will govern another appeal being MAT 483 of 2025.
3. Based on requisition forwarded by the High Court at Calcutta (hereinafter referred to as 'High Court') which reached the Public Service Commission, West Bengal (hereinafter referred to as 'Commission') through the Judicial Department, Government of West Bengal an advertisement was published on 30th December 2022 for holding West Bengal Judicial Service Examination, 2022. As per said advertisement dated 30th December, 2022, 12 (twelve) vacancies were identified as clear vacancies and 17 (seventeen) vacancies were identified as anticipated vacancies. It was stated in the said advertisement out of 12(twelve) clear vacancies 8(eight) were earmarked as unreserved vacancies, one vacancy was reserved for Scheduled Caste candidate, one vacancy was reserved for Scheduled Tribe candidate, one vacancy was reserved for OBC(A) category candidate whereas one vacancy was reserved for OBC(B) category candidate. Likewise out of 17 (seventeen) anticipated vacancies 10 (ten) vacancies were unreserved, 2 (two) vacancies were reserved for Scheduled Caste candidate, one vacancy was reserved for Scheduled Tribe candidate, 2 (two) vacancies were reserved for OBC(A) category candidate, 1 (one) vacancy was reserved for OBC(B) category candidate and 1 (one) vacancy was reserved for person with disability. The procedure for holding selection process was divided into three parts namely, Preliminary Examination (MCQ Type), Final Examination (Conventional Type-Written) and Personality Test. Vide aforesaid

advertisement eligible candidates were intimated to apply for participating in said West Bengal Judicial Service Examination, 2022.

4. Appellant applied under OBC(A) category and on conclusion of said selection process in the merit list appellant ranked 36th out of 54 enlisted candidates. However, appellant did not come within the zone of consideration for being appointed in the post of Civil Judge (Junior Division) which triggered the connected writ petition. Precisely case of the appellant is if based on combined merit list published by Commission on 13th May, 2024 roster point would have been applied for identifying reserved vacancies including OBC(A) category she could have been appointed being one of the selected candidates under OBC(A) category. According to the appellant one Bushra Banu stood first in the combined select list who ranked 12th and as per norms she was required to be treated as 'own merit candidate' and ought to have been allotted a vacancy earmarked for unreserved candidate thereby paved way for below ranked three OBC(A) category candidates namely Rahul Sk., Fauzia Ahmed and appellant (Ivana Hossaini). It was argued on behalf of the appellant if clear and anticipated vacancies were taken together there would have been 18 (8+10) unreserved vacancies, 3 (1+2) SC vacancies, 2 (1+1) ST vacancies, 3 (1+2) OBC (A) vacancies, 2 (1+1) OBC (B) vacancies and 1 (one) vacancy was reserved for person with disability. In other words, as per submission made on behalf of the appellant appointment of Bushra Banu as 'own merit candidate' could make all 3 (three) vacancies reserved for OBC (A) category [1 (one) under clear vacancy and 2 (two) under anticipated vacancy] available to below ranked OBC(A) category

candidates namely, Rahul Sk., Fauzia Ahmed and appellant (Ivana Hossaini).

5. After publication of select list on 14th May, 2024 appellant made representation on 29th May, 2024 addressed to the Chairman of the Commission for taking necessary steps which would permit said appellant to be appointed in one of the three vacancies reserved under OBC(A) category which could not yield result prompting the petitioner to approach the Court with the writ petition.

6. Another limb of submission made on behalf of the appellant was after the select list dated 14th May, 2024 was published by the Commission appellant for the first time came to know that vacancies were bifurcated into two parts, clear vacancy and anticipated vacancy. Prior to publication of select list dated 14th May, 2024 it was not open to the appellant to lay challenge against the said bifurcation of select list in respect of clear and anticipated vacancies relying upon West Bengal Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1976. Therefore, steps taken by the appellant may not be termed as delayed approach i.e. after participation in the selection process and finding that appellant was not successful approached this court. In this regard, reliance was placed on the judgments reported in **(2020) 20 SCC 209 (Ramjit Singh Kardam & Ors. vs. Sanjeev Kumar & Ors.)** and **(2019) 20 SCC 17 (Dr. (Major) Meeta Sahai vs. State of Bihar & Ors.)**.

7. Sum and substance of the submissions of the appellant were that the Commission added one more stage between declaration of final select list and communication made to the appointing authority for appointments which was not tenable. Commission was required to complete the selection process based on “one selection, one select list/panel”. Reliance was also placed on a letter dated 26th July, 2022 issued by the Principal Secretary, Judicial Department, Government of West Bengal in order to substantiate 12 (twelve) clear vacancies and 17 (seventeen) anticipated vacancies were required to be taken together for filling up those vacancies since anticipated vacancies fructified at the material point of time. To fortify the case of the appellant the manner of selection followed in Delhi and Haryana was referred to which according to the appellant was based on single select list including different categories of vacancies.

8. On behalf of the appellant reliance was also placed on the following judgments:-

- i. **(2008) 17 SCC 703 (Malik Mazhar Sultan (3) & Anr. vs. Uttar Pradesh Public Service Commission & Ors.)**
- ii. **(2009) 17 SCC 24 (Malik Mazhar Sultan & Anr. vs. Uttar Pradesh Public Service Commission & Ors.)**
- iii. **(2021) 3 SCC 755 (High Court of Kerala vs. Reshma A. & Ors.)**

9. High Court, State respondents and Commission are represented by learned advocates who opposed the appeal and it was submitted that appointments cannot be over and above vacancies which were advertised.

Once vacancies are advertised, such number can neither be increased nor Commission can recommend more candidates than what were advertised. Submission was also made based on advertisement dated 30th December, 2022 wherein vacancies were bifurcated under two categories - clear and anticipated. According to the respondents accepting such bifurcation indicated in the said advertisement appellant participated in the selection process and after publication of select list based on merit when found she was not coming within the zone of consideration for being appointed being OBC(A) category candidate questioned bifurcation of vacancies. Reliance was placed on the judgments reported in **(2024) 2 SCC 269 (Vivek Kaisth & Anr. vs. State of Himachal Pradesh & Ors.)** and **(2016) SCC OnLine Cal 610 [The Registrar (Judicial Service), High Court, Appellate Side, Calcutta vs. Moumita Sen & Ors.]**.

10. According to respondents High Court Administration only declared the vacancies and roster point was applied by the State and Commission separately to clear and anticipated vacancies and such issue was concluded vide ratio of **Moumita Sen** (supra).
11. In terms of the ratio of **Malik Mazhar Sultan (3)** (supra) vacancies were notified by the High Court and on applying roster point to clear and anticipated vacancies advertisement was published on 30th December, 2022 for holding West Bengal Judicial Service Examination, 2022 for filling up 29 (twenty nine) vacancies of Civil Judge (Junior Division) (clear vacancies 12 + anticipated vacancies 17). Appellant offered candidature

and participated in the selection process. On conclusion of three phases namely, Preliminary Examination (MCQ Type), Final Examination (Conventional Type-Written) and Personality Test select list was published based on merit by the Commission on 13th May, 2024 where appellant ranked 36th; but under OBC (A) category, appellant ranked 4th after Bushra Banu, Rahul Sk. and Fauzia Ahmed. In sync with the advertisement dated 30th December, 2022 whereby 29 (twenty nine) vacancies were divided into two categories – clear vacancy and anticipated vacancy, Commission published final select list on 14th May, 2024 on applying roster point to those two categories of vacancies – clear and anticipated. Lone OBC(A) vacancy under 12 (twelve) clear vacancies was offered to Bushra Banu whereas two vacancies reserved under OBC (A) category were offered to Rahul Sk. and Fauzia Ahmed out of 17 (seventeen) anticipated vacancies. Since appellant ranked 36th as per combined merit list being OBC (A) category candidate she did not come within the zone of consideration.

12. On appreciation of the steps taken by the Commission it appears that combined merit list dated 13th May, 2024 was published to make enlisted candidates being informed of their merit position and vide list dated 14th May, 2024, first 12 (twelve) candidates out of merit were recommended against the vacancies earmarked as clear vacancies and thereafter 17 (seventeen) candidates were recommended against anticipated vacancies subject to availability. Publication of combined merit list dated 13th May, 2024 made the selection process transparent based on which list dated

14th May, 2024 was published for recommending candidates under different categories in terms of advertisement dated 30th December, 2022 where total 29 (twenty-nine) vacancies on bifurcation were classified under clear vacancy and anticipated vacancy. Therefore, we do not find fault with applying roster point separately to the clear vacancies and anticipated vacancies rather it is found to be necessary in terms of the advertisement dated 30th December, 2022 as the selection process for filling up 29 (twenty-nine) vacancies of Civil Judge (Junior Division) commenced on publication of advertisement on 30th December, 2022.

13. In terms of the ratio of **Malik Mzahar Sultan (3)** (supra) High Court was required to notify vacancy within the prescribed time which was complied with and thereafter advertisement was published by the Commission on 30th December, 2022. Albeit as per ratio of **Malik Mzahar Sultan (3)** (supra) it was required to notify vacancies by the High Court including existing vacancies, future vacancies that may arise within one year due to retirement and vacancies that may arise due to promotion, death or otherwise i.e 10% of the number of posts but by virtue of subsequent clarification made by the Supreme Court in **Malik Mzahar Sultan & Anr.** reported in (2009) 17 SCC 24 High Courts / Commissions are required to notify existing number of vacancies plus anticipated vacancies for the next one year and some candidates also to be included in the wait list. In **Reshma A.** (supra) ratio of **Malik Mzahar Sultan (3)** (supra) and **Malik Mzahar Sultan & Anr.** (supra) which was decided by three Judge Bench reported in (2009) 17 SCC 24 were discussed in

paragraph 28 and in paragraph 30 it was deduced that in computing vacancies to be notified annually by the High Court three factors to be borne in mind, those are: (i) existing number of vacancies; (ii) the anticipated vacancies for the next year and (iii) some candidates to be included in the wait list. Taking note of the ratio of **Malik Mzahar Sultan (3)** (supra), **Malik Mzahar Sultan & Anr.** (supra) decided on 24th March, 2009 and **Reshma A.** (supra) it is found that based on vacancies being notified by the High Court for initiation of selection process for filling up posts of Civil Judge (Junior Division) advertisement was published on 30th December, 2022 by the Commission for conducting West Bengal Judicial Service Examination, 2022; steps taken by the respondent authorities are not in conflict with the aforesaid decisions of the Supreme Court.

14. In **Moumita Sen** (supra) a coordinate bench considered selection process of 2014 in connection with which 39 (thirty nine) clear vacancies and 25 (twenty five) anticipated vacancies were advertised. However, out of 25 (twenty five) anticipated vacancies 15 (fifteen) vacancies fructified and selection was made against 39 (thirty nine) clear vacancies and 15 (fifteen) vacancies aggregating 54 (fifty four) whereas 10 (ten) anticipated vacancies could not be filled up since those vacancies did not mature at the relevant point of time. Participants in 2014 selection process were clamoring for their appointment against those 10 (ten) remaining vacancies under anticipated vacancies which did not mature. It was argued on behalf of candidates that High Court Administration illegally

clubbed two lists i.e. one for confirmed vacancies and the other for anticipated vacancies thereby changing the roster position. However, in paragraph 17 it was observed relating to changing roster point that roster point was calculated separately for the anticipated vacancies. Such observation in **Moumita Sen** (supra) does not come in aid of the appellant herein rather it fortifies case of the respondents.

15. However, we are not ad-idem with the view expressed by the learned single judge to the extent that accrual of right of the appellant on publication of select list on 13th May, 2024 and list dated 14th May, 2024 for recommending selected candidates thereby deciding appellant's claims being consequential to those lists and as such question of giving up known right was not relevant. Publication of list dated 14th May, 2024 for recommending selected candidates applying roster point separately to clear vacancies and anticipated vacancies is sequel to advertisement dated 30th December, 2022 wherein it was specifically stipulated that total 29 (twenty nine) vacancies were bifurcated into anticipated and clear vacancies and reservation of vacancies under those two categories were separately made. Therefore, while applying under said advertisement dated 30th December, 2022 it was made known to the appellant that roster point would be applied separately to clear and anticipated vacancies. Accepting such position as emanates from advertisement dated 30th December, 2022 appellant offered her candidature, participated in the selection process and having found that she did not come within the zone of consideration for being appointed

under OBC(A) category questioned appointments made on the basis of list dated 14th May, 2024. Step taken by the Commission by issuing list containing candidates to be recommended for appointment as it appears from list dated 14th May, 2024 is in sync with advertisement published on 30th December, 2022. In above situation ratio of **Manish Kumar Shahi vs. State of Bihar & Ors.** reported in **(2010) 12 SCC 576** and the observation specifically made in paragraph 16 is found to be applicable.

16. In the same breath we hasten to add that elaborate discussion made by the learned single judge in the judgment under appeal relating to anomalous outcome in the event roster point is applied to the list of candidates against clear vacancies and anticipated vacancies taking those categories of vacancies together, is a relevant consideration in rejecting the prayer of the writ petitioner. If all the anticipated vacancies are not fructified in the relevant year of selection candidates placed higher in the merit list under reserved category may not be favoured with the appointments by treating those candidates as 'open merit candidate' whereas below ranked candidates under the said reserved category may get chance to be appointed. To obviate such anomalous situation roster point was applied separately to clear vacancies and anticipated vacancies. In **Moumita Sen** (supra) in paragraph 16 the coordinate bench recorded that out of 25 (twenty five) anticipated vacancies 10 (ten) did not fructify which may deprive candidates ranked higher in the merit list under reserved category in obtaining berth in the cadre.

17. In above conspectus we do not find merit in the appeal and same stands dismissed along with connected applications.
18. As similar issue is involved in the appeal being MAT 483 of 2025 excepting the appellant in the said appeal is not an OBC (A) category candidate but OBC (B) category candidate; appeal being MAT 483 of 2025 (Susmita Ghosh vs. The State of West Bengal & Ors.) is also dismissed along with connected applications.
19. Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)

20. I agree.

(Debangsu Basak, J.)