

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

F.M.A. 702 of 2025

With

IA No.: CAN 1 of 2025

Smt. Priyanka Biswas & Ors.

Vs.

The Hon'ble High Court, Calcutta & Ors.

For Appellants	: Mr. Pratik Dhar, Ld. Sr. Adv. Mr. Samir Halder, Adv. Mr. Pappu Adhikari, Adv. Mr. Snehal Sinha, Adv.
For the State	: Mr. Dipanjan Datta, Ld. Sr. Govt. Adv. Mrs. Paromita Malakar (Dutta), Adv.
For the High Court Administration	: Mr. Jaydip Kar, Ld. Sr. Adv. Mr. Saikat Banerjee, Ld. Sr. Advocate Mr. Gourav Das, Adv. Mr. Shirsho Banerjee, Adv.
For the PSC	: Ms. Piyali Sengupta, Adv. Mr. Victor Chatterjee, Adv.
Hearing Concluded on	: August 19, 2025
Judgment on	: September 19, 2025

DEBANGSU BASAK, J.:-

1. Appellants have assailed the judgment and order dated March 18, 2025 passed in WPA 21883 of 2024. By the impugned

judgment and order, learned Single Judge has dismissed the writ petition of the appellants.

2. Learned Senior Advocate appearing for the appellants has submitted that, the appellants participated in the West Bengal Judicial Service Examination, 2022. He has contended that, the advertisement specified 29 vacancies where 12 being specified as clear vacancy and 17 anticipatory vacancy. He has contended that, the calculation of the vacancies declared in the advertisement setting in motion the selection process for the year 2022 was incorrectly done.

3. Learned Senior Advocate appearing for the appellants has referred **2008 Volume 17 Supreme Court Cases 703 (Malik Mazhar Sultan (3) and Another vs. Uttar Pradesh Public Service Commission and Others)** and **2009 Volume 17 Supreme Court Cases 24 (Malik Mazhar Sultan and Another vs. Uttar Pradesh Public Service Commission and Others)** and submitted that, the number of vacancies has to be calculated by the High Court. Moreover, according to him, such calculation should be on the basis of existing vacancies and anticipated vacancies.

4. Relying upon **2024 Volume 2 Supreme Court Cases 269 (Vivek Kaisth and Another vs. State of Himachal Pradesh and Others)** learned Senior Advocate appearing for the appellants has contended that, vacancies which would not be anticipated before the date of the advertisement or the vacancies which did not exist at the time of the advertisement are vacancies for the future. The vacancies which have arisen after the advertisement cannot be used for any previously advertised recruitment process.
5. Learned Senior Advocate appearing for the appellants has contended that, if there is a clash between the number of vacancies and the method of calculation then, the latter that is the method of calculation should prevail. He has contended that, the number of vacancies must be arrived at by the High Court based on the mathematical calculation as laid down in **Malik Mazhar Sultan (3) and Another (supra)** and **Malik Mazhar Sultan and Another (supra)**.
6. Learned Senior Advocate appearing for the appellants has contended that, the Lay Note dated 3, 2022 does not give the correct vacancy figures. He has contended that, such Lay Note has carried the existing vacancies backwards and therefore has violated the dictum of **Malik Mazhar Sultan (3) and Another**

(supra), Malik Mazhar Sultan and Another (supra) and Vivek Kaisth and Another (supra).

7. Learned Senior Advocate appearing for the appellants has contended that, the advertisement for the 2021 selection process was published on July 9, 2021 with the result thereof was declared on July 26, 2022. The notification for the promotion was made on September 8, 2021. Therefore, before the result of the promotion being declared there was no possibility of anticipation. According to him, since on the date of the advertisement for the 2022 selection process, result of the Civil Judge (Senior Division) was not being declared, 21 vacancies were not anticipated for 2021. He has contended that, High Court deleted 14 vacancies from the 2021 vacancies. By this High Court has taken future vacancies into consideration.

8. Learned Senior Advocate appearing for the appellants has in the written notes of argument, referred to the Right to Information Act reply. He has also relied upon **2019 Volume 20 Supreme Court Cases 17 (Dr. (Major) Meeta Sahai vs. State of Bihar and Others)** in support of his contention.

9. Learned Senior Advocate appearing for the High Court Administration has contended that in the present appeal, the issue

is whether, the declaration of vacancy for the 2022 selection process was correct or not.

10. Learned Senior Advocate appearing for the High Court Administration has contended that, the number of vacancies declared by the High Court for the 2022 selection process was clear 12 and anticipated 17 aggregating to 29. This declaration has been made based on a Lay Note dated January 3, 2022. This Lay Note has the calculation on the basis of which vacancies were declared by the High Court. Based on such Lay Note, High Court with the approval of the Administrative Committee has informed State about such vacancy. State in turn has informed such vacancies to the Public Service Commission which ultimately resulted in the recruitment notification dated December 30, 2022.

11. Learned Senior Advocate appearing for the High Court Administration has contended that, appointments cannot be made over and above the vacancies which have been advertised in support of such contention ***Vivek Kaisth and Another (supra)*** is laid down.

12. Learned Senior Advocate appearing for the High Court Administration has contended that, the Lay Note dated January 3, 2022 gives a plausible view of the calculation of vacancies. Merely

because the appellants are putting up a calculation and has contended that another view is possible as regards calculation, the same should not be accepted. He has also referred to the additional report in the form of an affidavit filed before the learned Single Judge, in this regard.

13. Appellants had participated in the West Bengal Judicial Service Examination, 2022. Public Service Commission has issued advertisement in respect of such examination on December 30, 2022. In such advertisement, Public Service Commission had declared total vacancy of 29 with a clear vacancy of 12 and anticipated of 17. Advertisement also specified the number of vacancies available in each of the reserved and unreserved category for both anticipated and clear vacancies.

14. Appellants had participated in such selection process unconditionally. They had filed the writ petition subsequent to the declaration of the results of the selection process.

15. The issue that has been raised by the appellants in the writ petition and in the present appeal is whether the vacancies declared by the High Court Administration and subsequently as appearing in the advertisement of the Public Service Commission is correct or not.

16. Selection process of the nature in which, the appellants had participated is now governed by **Malik Mazhar Sultan (3) and Another (supra), Malik Mazhar Sultan and Another. Malik Mazhar Sultan (3) and Another (supra)** is in earlier point of time and has laid down the process by which, the number of vacancies are to be calculated and the time period within which the same is to be notified. It has mandated that, vacancies are to be calculated by taking into account the existing vacancies, future vacancies that may arise within one year due to retirement, future vacancies that may arise due to promotion, death or otherwise say 10 per cent of the total number of post.

17. **Vivek Kaisth and Another (supra)** has laid down that, in calculating future vacancies, the vacancies that may arise for the next selection process should not be taken into consideration. Although **Malik Mazhar Sultan (3) and Another (supra)** and **Malik Mazhar Sultan and Another (supra)** has dealt with the selection processes in the district judiciary level and **Vivek Kaisth and Another (supra)** has not, nonetheless the principles enunciated therein applies.

18. At the hearing before the Learned Single Judge the High Court Administration had been directed by an order dated

December 3, 2024 to file an affidavit on the aspect of calculation of vacancies for the subject year. High Court Administration, had filed a report in the form of an affidavit affirmed by the then Registrar General.

19. In such affidavit, High Court Administration has explained that,

(i) due to the then ongoing pandemic, the recruitment for the subject post was delayed and went beyond the schedule set by ***Malik Mazhar Sultan (3) and Another (supra)***.

(ii) In 2020, 26 anticipated vacancies were filled up. As on January 4, 2021, when the Lay Note was placed before the Administrative Committee for consideration, 5 clear vacancies were shown for the year 2021 and 9 anticipated vacancies were shown for the year 2021 aggregating to 14 vacancies.

(iii) The 9 anticipated vacancies were by reason of 11 retirement in the cadre of District Judge, Entry Level and that, 75 per cent of such vacancies were taken as anticipated vacancies in terms of the Rules as 25 per cent is reserved for direct recruitment from the Bar. Therefore, 9 vacancies i.e., 75 per cent of 11 candidates had been taken as anticipated vacancies.

(iv) 14 vacancies were reported to the Government on January 28, 2021.

(v) 21 vacancies had been declared in the cadre of Civil Judge, Senior Division for the year 2021 on September 8, 2021 by reason of promotion. 6 vacancies in the cadre of District Judge, Entry Level meant to be filled up by way of Direct Recruitment from the Bar for the year 2020 could not be filled up due to non availability of suitable candidates. By applying Rule 26 of the West Bengal Judicial (Condition of Service) Rules, 2004, some of such vacancies had been filled up by normal promotion. However, 3 vacancies had still remain unfulfilled.

(vi) At the time of calculation of vacancy in the cadre of Civil Judge (Senior Division) for the year 2021 the vacancies noted in the preceding sub paragraph had materialised due to promotion on August 3, 2021 and percolated to the cadre of Civil Judge (Junior Division).

(vii) Consequently the additional 7 vacancies which had occurred for the post of Civil Judge (Junior Division) were unforeseen.

(viii) Therefore, High Court Administration had declared 29 vacancies for the year 2021. 21 vacancies to the post of Civil Judge

(Senior Division) created consequent vacancies in the Civil Judge (Junior Division). 8 vacancies were required to be filled up as unforeseen vacancies by reason of filling of post of direct recruitment from the Bar quota.

(ix) High Court Administration had placed these facts before the Hon'ble The Chief Justice by a Lay Note dated February 1, 2022 which was directed to be placed before the Administrative Committee. Administrative Committee had considered the proposal and decided to continue with the 14 declared vacancy for the year 2021.

20. Learned Single Judge had given an opportunity to the appellants to file an affidavit to the report to the writ petition of the High Court Administration. Appellants had filed an affidavit. Appellants had failed to establish that the calculation of vacancies made by the High Court Administration is perverse.

21. At the hearing of the appeal, learned Senior Advocate for the appellant on instructions gave up the point of information received under the Right to Information Act, 2005 for calculation of the vacancy declared for the subject selection process. Independent of the appellants giving up such point, the materials on record have established that, the information sought for was

the date subsequent to the Lay Note being prepared. The Right to Information matter did not relate to the vacancies that had been declared at the material point of time. In fact, High Court Administration has provided information as to the vacancies subsisting on the date when the application under the Right to Information Act was made. There is a time difference between the Lay Note which was initially put up for declaring the vacancies and the vacancies existing at the date when the application under the Right to Information Act was made.

22. Therefore, the information received in response to the Right to Information Act application, cannot be utilised for the purpose of calculating of vacancies as done by the High Court Administration.

23. The calculation of the vacancies as has been done by the High Court Administration not being established to be perverse, and since, the same is a plausible view, we find no ground to set aside the vacancies declared. We have no material before us to declare that there should be higher number of vacancies than those declared by the High Court Administration.

24. In view of the discussions above, we find no ground to interfere with the judgment and order impugned in this appeal.

25. FMA 702 of 2025 along with all connected applications are dismissed without any order as to costs.

[DEBANGSU BASAK, J.]

26. I agree.

[SAUGATA BHATTACHARYYA, J.]