

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Prasenjit Biswas

WPST 137 of 2025

**NIRMAL CHANDRA BISWAS
Vs
STATE OF WEST BENGAL AND ORS.**

For the Petitioner : Mr. Victor Chatterjee,
Mr. Barnamoy Basak,
Ms. Shreya Bhattacharjee.

For the State : Mr. Tapan Kumar Mukherjee, Ld. AGP,
Mr. Somnath Naskar.

For the P.S.C. : Ms. Shraboni Sarkar,
Ms. Umme Habiba Khatun.

Judgment on : February 17, 2026.

Madhuresh Prasad, J

1. Briefly stating the facts leading to filing of this writ petition is that one Pritam Ghosal and present petitioner were unsuccessful candidates in the process of selection to the post of Krishi Prayukti Sahayak in the same selection process. Being aggrieved by introduction of qualifying marks for interview, leading to their disqualification both filed individual Original Applications before the West Bengal Administrative Tribunal ("Tribunal" for short). The present petitioner's O.A was 741 of 2019, whereas Pritam Ghosal's OA was filed thereafter and numbered

as O.A 940 of 2019. It is their common case that as per advertisement the written examination comprised of total 150 marks (Part I- 120 marks and part II- 30 marks). 15 marks were allotted for interview. The advertisement did not prescribe cut off marks either for the written examination (Part I) or for the interview. Qualifying marks was prescribed only for Part II wherein the applicant secured the qualifying marks.

2. The petitioner in OA No. 940 of 2019 (Pritam Ghosal) had secured total 97.25 marks and based on such aggregate marks he was placed higher than the last selected candidate from his category (UR) who had secured 95.20 marks. However, he was not offered the appointment because the authorities in the midst of the recruitment process introduced qualifying marks in the interview (7 marks). In view of introduction of such qualifying marks, though Pritam Ghosal secured higher aggregate marks than the last selected candidate, he was deprived of recommendation for appointment since he did not secure qualifying marks in the interview. In such circumstance, when Pritam Ghosal approached the Tribunal raising a grievance regarding introduction of qualifying marks, the Tribunal by its order dated 04.12.2020 passed in OA No. 940 of 2019, held:

“...In our view when an advertisement was issued fixing cut off marks for part-II of the written examination only, it was improper and illegal to fix cut off marks in the interview subsequently. Therefore, fixing of cut off marks for the interview subsequent to the part-I and part-II examination is arbitrary and illegal and cannot be sustained and is therefore set aside and quashed. Since the applicant has secured 97.25 marks, which is higher than the last candidate, who had secured 95.20, which is evident from the intimation by the Assistant Secretary to the

Government of West Bengal to the Joint Secretary, Public Service Commission, West Bengal, the applicant is entitled to reliefs as prayed for. Therefore, let there be an order directing the Public Service Commission, West Bengal and its Secretary, the respondent no. 2, to recommend the name of the applicant for the post of Krishi Prayukti Sahayak to the Secretary, Department of Agriculture, Government of West Bengal - respondent no. 1 within eight weeks from the date of presentation of a copy of this order downloaded from the internet/website. After his name is recommended, the respondent no. 1 shall appoint him within eight weeks. The application is allowed..."

3. The order of the Tribunal was assailed by the respondents before the Calcutta High Court in a writ proceeding. WPST 9 of 2021 filed by the Commission was disposed of in the following terms:

"18. As noted above, the writ petitioners did not prescribe any qualifying marks to the interview prior to the commencement of the interview. Therefore, it cannot be said that, the private respondent participated at the interview knowing fully well the parameters of the interview. Apparently, a cut off mark was prescribed after conclusion of the interview. This prescription of the cut off mark subsequent to the interview obviously was not communicated to the candidates participating in the interview prior to the commencement of the interview.

19. In such circumstances, we find not reason to interfere with the impugned order of the tribunal.

20. We, however, extend the time period to comply with such order correspondingly with the period prescribed in the impugned order from the date of this order.

21. WP.ST 9 of 2021 is disposed of accordingly."

4. As per averments made in the Original Application filed by the petitioner, and the reply thereto filed by the Commission, an admitted position emerges as regards the marks obtained by the present petitioner: Part I – 69.75 marks, Part II – 9 marks, Interview – 3 marks. The petitioner thus secured total 81.75 marks.

5. There is also no dispute regarding a fact that the aggregate marks of the last selected candidate in the petitioner's category (SC) is 81.50 marks. Therefore, the petitioner had secured more marks than the last selected candidate in his category.
6. As per stand of the respondents the petitioner did not qualify in the interview, wherein the qualifying marks was fixed at 5 for SC category candidates. Therefore, the petitioner was not recommended by the Commission for the appointment in question.
7. In such circumstance, it is submitted by learned Advocate for the writ petitioner that Pritam Ghosal, had also secured higher than cut off marks in his category (Unreserved), but was denied recommendation by the Commission on the self-same ground that he did not secure qualifying marks in the interview. The Tribunal held the disqualification of Pritam Ghosal by applying a yardstick of qualifying marks in the interview, to be unsustainable. Thus, there can be no justification for applying the yardstick of qualifying marks in interview, in case of present petitioner in the same recruitment process.
8. The learned Advocate for the Commission has made an attempt to justify the introduction of qualifying marks. We find no scope for such argument in the present case since the same issue with respect to the self-same recruitment process was already decided in the case of Pritam Ghosal, relevant extract of the judgment (OA No. 940 of 2019) extracted above. The Tribunal held the introduction of qualifying marks for interview to be unsustainable and such finding was

affirmed by the High Court in WPST No. 9 of 2021. Now, there is no scope for reagitating the same issue, more so when Pritam Ghosal has been extended fruits of the order passed in OA No. 940 of 2019 as affirmed by WPST 9 of 2021.

9. Normally when a decision is rendered by a Court declaring illegality in a selection process, it is expected that the authorities would extend the benefit of such declaration to all candidates. This course of action is warranted to avoid discrimination, and the same is more emphatically applied to service jurisprudence. The principles in this regard are no longer *res integra*, and stands decided and reiterated by the Apex Court. The Apex Court has also laid down as to under what circumstances benefit of the judgment may not be extended to others. The law was summed up by the Apex Court in the case of **State of Uttar Pradesh and Others vs. Arvind Kumar Srivastava and Others** reported in **(2015) 1 SCC 347**. Paragraph 22 of the judgment reads:

“22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under.

22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma v. Union of India [K.C. Sharma v. Union of India, (1997) 6 SCC 721 : 1998 SCC (L&S) 226]). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

10. Keeping in background the settled legal principles we find that in the present case the present writ petitioner moved the Tribunal in OA No. 741 of 2019, for the same relief as Pritam Ghosal. The petitioner's OA was filed before the OA No. 940 of 2019 filed by Pritam Ghosal. Despite approaching the Tribunal prior to Pritam Ghosal the petitioner's OA has remained pending as is apparent from

a certified copy of the various orders passed by the Tribunal in his case, till filing of the writ petition. From the certified copies it appears that the Tribunal was of the view that the matter was to be placed before a Bench comprising of two members (judicial and administrative). Since the Tribunal then was comprised of only one member the matter could not be placed before a Bench of two members. . Thus, the petitioner's OA was pending since 2019.

11. As of now, since September 2025 the Tribunal is non-functional for want of any member. The learned Advocate for the petitioner, therefore, relying upon decision of the Apex Court in the case of ***Royer Mathew vs. South Indian Bank Limited represented by its Chief Manager and Others*** reported in **(2020) 6 SCC 1** submits that the petitioner is left remediless and, therefore, the matter may be considered by the writ Court. It is under such circumstance that we proceeded to consider the petitioner's case.

12. We find that there is no issue of any delay and latches coming in the way of grant of benefits to the petitioner in terms of the order passed in the case of Pritam Ghosal. The present petitioner may have been deprived of parity with Pritam Ghosal, only if his claim was suffering with the vice of delay and latches, acquiescence or if it was found that the present writ petitioner was a fence sitter. There is no factual foundation for such inference to be drawn in the present case, since the present petitioner approached the Tribunal for the self-same relief as Pritam Ghosal by filing an OA prior to filing of OA by Pritam Ghosal. The plea taken by the State in the opposition that the

petitioner is a fence sitter is unsustainable in fact and in law. In view of above consideration, there is no basis whatsoever to deny the petitioner parity with Pritam Ghosal and extend the same relief to the present writ petitioner as was extended to Pritam Ghosal by the Tribunal by its order dated 14.12.2020 passed in OA No. 940 of 2019 to the affirmed by judgment dated 19.06.2023 passed in WPST 9 of 2021 by a co-ordinate Bench.

13. We, therefore, direct the respondent No. 2, Public Service Commission to recommend the name of the applicant for the post of Krishi Prayukti Sahayak to the Principal Secretary, Department of Agriculture, Government of West Bengal - respondent no. 1 within eight weeks from the date of presentation of a copy of this order downloaded from the internet/website. After his name is recommended, the respondent no. 1 shall appoint him within eight weeks.

14. The application is allowed.

15. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Madhuresh Prasad, J.)

I agree.

(Prasenjit Biswas, J.)