

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty

&

The Hon'ble Justice Partha Sarathi Chatterjee

MAT 493 of 2024

State of West Bengal & Ors.

Vs.

Papiya Ghosal (Maity) & Ors.

With

MAT 509 of 2024

+

CAN 6 of 2024

+

CAN 7 of 2024

State of West Bengal & Ors.

Vs.

Kabita Samanta & Ors.

For the State/ Appellants (in both the matters) : Mr. Sirsanya Bandopadhyay,
Senior Standing Counsel,
Ms. Tapati Samanta.

For the Respondent Nos. 1 to 3. (in MAT 493 of 2024) : Mr. Rajendra Banerjee,
Mr. Sudip Kumar Chakraborty.

For the Respondent Nos. 4 & 5 (MAT 493 of 2024) : Ms. Mousumi Chakraborty,
Mr. Anjan Banerjee.

For the Respondent No. 1 (in MAT 509 of 2024) : Mr. Tushar Kanti Har,
Mr. Somnath Chakraborty.

- For the Union of India (in both the matters) : Reshmi Bothra,
Mr. Guddu Singh.
- For the added party (in MAT 493 of 2024) : Mr. Ashis Kumar Choudhury,
Mr. Babhru Bahan Bera,
Mr. Avisek Chatterjee.
- For the added party (in MAT 493 of 2024) : Mr. Partha Sarathi Sengupta,
Ld. Sr. Adv,
Mr. M. N. Roy,
Mr. Arabinda Maji,
Mr. Biawaroop Nandy,
- For the added party (in MAT 509 of 2024) : Mr. Pratik Dhar, Ld. Sr. Adv.,
Mr. Ashis Kumar Chowdhury,
Mr. Rajib Ghosh,
Mr. Babhru Bahan Bera
Mr. Arpayan Mukherjee.
- For the added party (in MAT 493 of 2024) : Mr. Soumya Majumder,
Ld. Sr. Adv.,
Mr. Gautam Banerjee,
Ms. Pompey Bose,
Ms. Mousumi Chakraborty,
Mr. Anjan Banerjee.
- For the Applicants (in CAN 6 & 7 of 2024)
(in MAT 509 of 2024) : Mr. Siddhartha Banerjee,
Mr. Sudipta Dasgupta,
Mr. Sandwip Sutradhar,
Mr. Sutirtha Nayek.

Hearing is concluded on : 13th January, 2025

Judgment On : 24th January, 2025

Partha Sarathi Chatterjee, J.

1. Both the appeals, preferred at the behest of the State of West Bengal and its functionaries, arise from a common order dated September 19, 2023, delivered by the learned single Bench in two writ petitions being WPA 6322 of 2024 (*Kabita Samanta vs. State of West Bengal & Ors.*) and WPA 22212 of 2022 (*Papiya Ghoshal (Maity) vs. State of West Bengal & Ors.*), which were heard analogously. For having thematic coherence, both appeals were heard together.
2. Prior to venturing to delve into the contentious issue involved in the appeal, it is prudent to outline the key facts that led to these appeals, which are as follows:
 - a) By a memorandum dated March 7, 2019, bearing No. 1789-SW/O/3E-16/2015, the Joint Secretary to the Government of West Bengal, Department of Women and Child Development and Social Welfare, informed the Director of the Integrated Child Development Scheme (ICDS) project, West Bengal, and the Controller of Vagrancy, that the Recruitment Rules for the posts of Supervisor under ICDS, along with the proposal for filling the vacancies of 3,376 posts of Supervisor, had been

approved by the Cabinet. According to the new Recruitment Rules, 422 posts would be filled by promotion, based on selection (by promotion) from Anganwadi Workers under ICDS and Case Workers under the Controller of Vagrancy. The remaining 2,954 posts would be filled through Direct Recruitment, through a selection process conducted by the Public Service Commission (in short, PSC). Both the Director and the Controller were instructed to compile a list of eligible and willing Anganwadi Workers and Case Workers to participate in the examination for the promotional posts.

- b) In pursuit of that objective, a selection process was initiated for the recruitment of 2,954 posts of Supervisor (female-only) under the ICDS, 2019 in the Department of Women and Child Development & Social Welfare, Government of West Bengal. Through an advertisement bearing No. 08 of 2019, applications were invited from eligible candidates for the aforementioned posts.
- c) Meanwhile, by a letter dated March 8, 2019, the Director instructed the eligible and willing Anganwadi Workers (in short, AWW) to submit their applications for the posts online by April 15, 2019. In response to the letter dated March 8, 2019, the writ petitioners/respondents, all of whom are Anganwadi Workers (AWWs), offered their candidatures for the post and participated in the examinations held on October 30, 2021, and October 31, 2021.

- d) Subsequently, the AWWs filed two separate writ petitions, namely WPA 6322 of 2022 and WPA 22212 of 2022, praying for an order to annul the memorandum dated March 7, 2019. They also prayed for order restraining the respondents from giving effect to the results of the examinations held on October 30, 2021, and October 31, 2021, as well as a stay on the entire recruitment process.
- e) The main grievances of the writ petitioners/respondents, as articulated in the two writ petitions, are that the Ministry of Women & Child Development, Government of India, through its memorandum No. 1-2/2014-CD.1 dated 15th September 2015, in supersession of all earlier guidelines, issued new guidelines regarding the filling of vacancies for the post of Supervisor. According to these new guidelines, 50% of the vacancies for the post of Supervisor would be filled by promotion from amongst Anganwadi Workers (AWWs) with at least 10 years of experience as AWWs and the prescribed qualifications, as per the Recruitment Rules for the post of Supervisor. In the event of a shortage of eligible candidates, the vacancies would be filled by direct recruitment. The remaining 50% of the vacancies would be filled through direct recruitment.
- f) However, through a memorandum dated 7th March 2019, the Joint Secretary to the Department of Women and Child Development and Social Welfare stated that, out of a total of 3,376 vacancies for the post of Supervisor, the Cabinet decided to fill 422 posts through promotion from AWWs, while the

remaining 2,954 posts would be filled by direct recruitment. This decision was made in complete derogation of the notification dated 15th September 2015 issued by the Ministry of Women & Child Development, Government of India. According to the petitioners, the memorandum dated 7th March 2019 is in conflict with the Government of India's memorandum dated 15th September 2015, and therefore, cannot stand. Additionally, the selection process initiated based on the memorandum dated 7th March 2019 is also flawed.

- g) Notably, the memorandum dated 7th March 2019 follows a memorandum dated 25th February 2019 issued by the Secretary to the Government of West Bengal, Department of Women and Child Development and Social Welfare. The Memo. dated 25th February 2019 (hereinafter referred to as the Rules of 2019) notified a Recruitment Rules which prescribed the method of recruitment. According to Rule 3(a) of the Rules of 2019, 50% of the posts for Supervisors would be filled by direct recruitment through a competitive examination conducted by the PSC, West Bengal. Rule 3(b) of the Rules of 2019 stipulates that the remaining 45% of the posts would be filled from AWWs of the ICDS scheme, while the remaining 5% would be filled from Case Workers, with the provision that if there are insufficient qualified Case Workers, the residual vacancies in the Case Worker quota may be filled by eligible and qualified AWWs.
- h) Rules 3 contains a footnote specifying that for vacancies occurred up to 30th September 2015, the ratio of direct

recruitment, as stated in Rule 3(a), and recruitment from the categories of AWWs and Case Workers, as specified in Rule 3(b), will be in a 75%:25% ratio, respectively. For vacancies created thereafter, the ratio of direct recruitment, as stated in Rule 3(a), and recruitment from the categories of AWWs (including Case Workers), as stated in Rule 3(b), shall be in a 50%:50% ratio, respectively.

- i) As mentioned earlier, both writ petitions were heard together and disposed of by a common order dated 19th September 2023, which is under challenge in these two appeals. Keeping the objective behind the issuance of the notification dated 15th September 2015 in mind, the learned single Bench directed the appellants to fill 50% of the 3,458 posts from AWWs. The learned single Bench noted that it found no justification for the appellants' decision to create an artificial distinction between vacancies that arose before 30th September 2015 and those that arose thereafter, and to fill the vacancies occurring before 30th September 2015 in a 75%:25% ratio through direct recruitment and promotion from AWWs and Case Workers, while filling the vacancies arising after 30th September 2015 in a 50%:50% ratio through direct recruitment and promotion from AWWs and Case Workers. Aggrieved by this order, these appeals have been preferred at the instance of the State and its functionaries.
3. Mr. Bandyopadhyay, learned advocate appearing in support of the appeals argued that the learned single Bench had erroneously observed that the State had made an artificial distinction between vacancies that occurred

prior to 30th September 2015 and those that arose thereafter. He contended that vacancies occurred up to 30th September 2015 must be filled in accordance with the recruitment rules prevailing at that time. Similarly, vacancies that arose after 30th September 2015 should be filled according to the Recruitment Rules of 2019, which were framed in accordance with the instructions contained in the memorandum dated 15th September 2015 issued by the Ministry of Women & Child Development, Government of India.

4. He claimed that the State rightly decided to fill up the vacancies which arose prior to 30.09.2015 at the ratio of 75% : 25% through direct recruitment and by promotion from AWWs and Case Workers, and to fill up the vacancies occurred after 30.09.2015 at the ratio of 50% : 50% through direct recruitment and by promotion from AWWs and Case Workers.
5. Inviting our attention to a calculation sheet appearing at page 40 of the paper book filed in connection with MAT 509 of 2024, Mr. Bandyopadhyay contended that in September 2015, there were 1,949 Supervisors in service, with 964 posts filled through direct recruitment and 985 posts by promotion though applying a 75%:25% ratio, 1,462 and 487 posts were required to be filled up through direct recruitment and promotion respectively. Similarly, in January 2019, the total number of Supervisors in-service was 1,500, with 734 posts filled through direct recruitment and 766 by promotion though applying 50% : 50% ratio, 750 posts in each category were required to be filled up through direct recruitment and by promotion. He claimed that resultantly, 514 posts were filled up by promotion in excess.

6. He further contended that in September 2015, the total number of vacancies was 3,009, with 2,755 posts and 254 posts required to be filled applying a 75%:25% ratio. In January 2019, there were a total of 3,458 vacancies, and after deducting the 3,009 posts, 449 posts remained to be filled in a 50%:50% ratio. He submitted that 82 posts were allotted for Jangal Mahal, and thus, out of 3,376 posts, the State correctly decided to fill 2,954 posts through direct recruitment and 442 posts through promotion, respectively. According to Mr. Bandopadhyay, there was no illegality in conducting the selection process. He argued that by giving retrospective effect to the notification dated 15th September 2015, the rights of the candidates to be appointed to the posts cannot be taken away.
7. To invigorate his submission, Mr. Bandopadhyay relied on several decisions. He referred to a decision, reported at (1983) 3 SCC 284 (*Y. V. Rangaiah vs. J. Sreenivasa Rao*) for the proposition that vacancies must be filled according to the rules prevailing at the time the vacancies arose. He also cited a decision, reported at (2011) 15 SCC 16 (*Gridco Limited & Anr. vs. Sadananda Doloj & Ors.*) for the proposition that a Writ Court is entitled to examine administrative actions in cases of illegality, irrationality, unreasonableness, or unfairness, but cannot function as an appellate body over administrative decisions or determine whether a more appropriate decision could have been made. He further relied on decisions, reported at (1990) 1 SCC 411 (*P. Mahendran & Ors. vs. State of Karnataka & Ors.*) and (1998) 9 SCC 223 (*B.L. Gupta & Anr. vs. M.C.D.*) to argue that, in the absence of an express provision or necessary intent, a rule or its amendment cannot be given retrospective effect. Lastly, he cited another decision, reported at (2023 SCC OnLine SC 344) (*Tajvir Singh Sodhi &*

Ors. vs. State of Jammu and Kashmir & Ors.) to lend support to his contention that courts should refrain from interfering in the selection process for public employment, which involves specialized expertise and discretion, and should not sit in appeal over the decisions of the selection committee.

8. Mr. Dhar, learned senior advocate, while opposing the appeal on behalf of candidates aspiring to be appointed by promotion, argued that since the entire ICDS project is funded by the Central Government, only the Central Government has the authority to prescribe the Recruitment Rules for the post.
9. Therefore, the State cannot frame any rules that conflict with those promulgated by the Central Government. He further argued that candidates aspiring for direct recruitment to the post, who have not yet entered service, have no right to say what would be the number of vacancies for a particular post.
10. He argued that 'recruitment' and 'selection' are distinct terms. He explained that recruitment is a broader process that begins when an employer takes steps to appoint an employee, whereas selection begins when candidates from the open market or those sponsored by the employment exchange are invited to participate in the selection process. In support of this contention, he relied on a decision rendered by a Special Bench of this Court, reported at *(2019) 2 CHN 1 (LB) (Managing Committee, Kadamtala High Madrasah vs. State of West Bengal & Ors.)*.
11. He contends that the Recruitment Rules, 2019 are solely intended for recruitment and not for any other purpose. Referring to the preamble of the Rules, he argued that they were promulgated to regulate recruitment to

the post of Supervisor. Therefore, Rule 3 of the Rules, which prescribes the method of recruitment, pertains to the post itself and not for the vacancies. As such, the State is bound to fill the posts of Supervisor in a 50%:50% ratio.

12. He emphasized that the note appended to Rule 3 of the Rules of 2019 is not against the writ petitioners/respondents, i.e., the AWWs in service who aspire for the posts, as the note pertains to vacancies arising before and after a specific date. Citing the decision, reported at *(2020) 2 SCC 173 (Anupal Singh & Ors. vs. State of Uttar Pradesh & Ors.)*, he argued that the terms "post" and "vacancy" are distinct, and since the clause 3 of Recruitment Rules, 2019 pertains to the post, the note appended thereto cannot override the same. He further argued that a note to a rule cannot derogate from the explicit words of the substantive provision of the rule and must be read as explanatory, in harmony with the substantive provision. In support of such contention, he relied on two decisions, reported at *(2004) 13 SCC 25 (Rai Sudhir Prasad vs. State of Bihar & Ors.)* and *(2005) 6 SCC 776 (Punjab State Electricity Board Ltd. Vs. Zora Singh & Ors.)*. Citing a decision, reported at *(2023) 3 SCC 773 (State of Himachal Pradesh & Ors. vs. Raj Kumar & Ors.)*, he contended that the judgment of *Y.V. Rangaiah (supra)*, relied on by Mr. Bandopadhyay, has been overruled and emphasized that there is no universal rule that vacancies must necessarily be filled on the basis of the rules which existed on the date on which they arose.
13. He asserted that in the present case, even if it is assumed that some candidates were appointed by promotion in excess, the number of candidates appointed by promotion will not exceed 50% of the total

strength if the appellants are directed to fill the vacancies in a 50%:50% ratio.

14. Mr. Sengupta, learned senior advocate, appearing for the candidates selected for the posts by direct recruitment adopted the submissions of Mr. Bandopadhyay.
15. Mr. Majumder, learned senior advocate representing the writ petitioners/respondents, submitted that to apply for the post, an AWW is required to have 10 years of working experience. He contended that, considering the objective behind the promulgation of the Recruitment Rules, 2015, it can be argued that allowing the State to fill the posts by applying the note appended to Rule 3 of the 2019 Rules would lead to the unjust deprivation of AWWs who aspire to acquire the posts through promotion.
16. Mr. Banerjee, learned advocate appearing for the applicants in CAN 6 of 2024 and CAN 7 of 2024 filed in connection with MAT 509 of 2024, submitted that these applicants should be added as parties, since any order passed in these two appeals may seriously impact their rights. He contended that the State has been conducting the current selection process without properly following the reservation policy and without reserving the appropriate number of posts for candidates from the OBC-A community.
17. The issue sought to be raised by Mr. Banerjee through the aforementioned two applications for the addition of parties was not addressed or considered by the learned Single Bench. At the appellate stage, it would not be appropriate to enlarge the scope of the *lis* by introducing new issues. For this reason, we are not inclined to entertain these applications, and accordingly, those two applications are dismissed.

18. The settled legal principle, as established in the case of *State of Himachal Pradesh & Ors. vs. Raj Kumar & Ors. (supra)*, is that there is no universal rule mandating that vacancies must be filled according to the rules that were in place when the vacancies arose. Therefore, it is clear that the State does not have a statutory obligation to fill vacancies based on the rules that existed at the time the vacancies occurred.
19. Significantly, Clause 6 of the notification dated 15.09.2015 issued by the Ministry of Women & Child Development, Government of India, authorized the State to amend the Recruitment Rules for the post. However, this clause stipulated that the amendment of the Rules would adhere to the guidelines set forth in the notification. The notification dated 15.09.2015 superseded all prior guidelines and mandated that vacancies should be filled in a 50%:50% ratio through direct recruitment and promotion, respectively. In contrast, when the State amended the rules by inserting a note after Rule 3 in the Rules of 2019 (Notification dated 25.02.2019), a new guideline was introduced, stipulating that the ratio for direct recruitment and recruitment from AWWs and Case Workers taken together, would be 75%:25%. Consequently, it appears that the note appended to Rule 3 of the Rules of 2019 is inconsistent with the notification dated 15.09.2015.
20. Although neither party has challenged the validity of the amended Rules (notification dated 25.02.2019), it can be argued that subordinate legislation must conform to the enabling statute and cannot exceed the authority granted by the parent Act (See, case of *State of Tamil Nadu & Anr. vs. P. Krishnamurthy, reported in (2006) 4 SCC 517*). Therefore, the

power to amend the Rules should be interpreted as being granted to carry out the purposes of the Recruitment Rules, 2015.

21. However, keeping *generality vs enumeration* principle in mind and even assuming that the power to amend the rules is a general delegation without specific limitations and/or particularization, it may be permissible to examine the object of the parent Rules (here, the 2015 Rules) and assess whether the amended rules align with the scope of such general power. Nonetheless, it can be argued that such delegated power cannot be used to extend or restrict the scope of the parent Act/Rule, as it is strictly ancillary and cannot create substantive rights or obligations not envisaged by the parent Rule.
22. An examination of the prefatory words of the 2015 Rules, as framed by the Government of India, reveals that the existing AWWs were recognized as the most important functionaries at the village level under the ICDS scheme. In light of the recent exponential growth in Anganwadi Centres and Anganwadi Workers, and their significant efforts to ensure quality service delivery and community participation, the 2015 Rules were promulgated to encourage AWWs' participation in these posts, based on their merit, and to improve their career prospects.
23. Therefore, since a general power to amend the Recruitment Rules was delegated, it can be concluded that the State is not debarred from considering the number of posts occupied by candidates through direct recruitment and promotion, and then amending the Rules to further the objectives of the Parent Rules. It is also important to note that Rule 3 specifies that 50% of the vacancies for the post should be filled by promotion of AWWs with 10 years of experience and the prescribed

qualifications for the Supervisor post. If no suitable candidates are found, the vacancies would be filled through direct recruitment. This indicates that the State was not required to strictly maintain a 50%:50% ratio between candidates selected by direct recruitment and those selected by promotion.

24. The records reveal that by an interim order dated 11.07.2024, passed in these appeals, the State was permitted to make appointments, up to a total of 1,729, either by promotion or direct recruitment, in each category, if it so desired, from the declared vacancies. Mr. Bandopadhyay submitted that, in accordance with the order dated 11.07.2024, the State has since filled the vacancies of 1,729 posts out of total 3458 posts through direct recruitment.

25. According to the calculation sheet produced by the State, as in January 2019, 734 posts were occupied by in-service candidates through direct recruitment, and 766 posts were occupied through promotion. If 1,729 posts are filled through direct recruitment, as per the interim order dated 11.07.2024, the total number of posts occupied by candidates through direct recruitment would be 2,463 (1,729 + 734). Since 50% of the total posts amounts to 2,479, there is a shortfall of 16 posts to meet the 50% target for direct recruitment. Meanwhile, 766 posts are occupied by candidates through promotion. If the remaining 1,729 posts are filled by promotion, the total number of posts occupied by candidates through promotion would be 2,495 (1,729 + 766), resulting in a difference of 16 posts. The calculation sheet, as referred to above, suggests that, as of January 2019, 16 posts have been occupied by candidates through promotion in excess.

26. In light of the discussions above and the current status of the recruitment process, we are of the view that the learned Single Bench has rightly directed that the respondents should proceed with filling the vacancies while adhering to the objectives and mandate outlined in the Recruitment Rules of 2015, as promulgated under the Notification dated 15.09.2015. However, considering subsequent developments, we are of the opinion that the State should take into account the posts occupied by candidates through direct recruitment and promotion as of January 2019, as well as the posts filled under the interim order dated 11.07.2024. The State should make efforts to fill the remaining 1,713 vacancies (1,729 – 16) from AWWs and Case Workers. In the event the suitable candidates from AWWs and Case Workers are not available, the State shall be at liberty to fill the remaining vacancies, if any including the aforementioned 16 posts, through direct recruitment. It is ordered accordingly.
27. With these observations and order, the appeals are disposed of. As directed, the applications being CAN 6 of 2024 and CAN 7 of 2024 are dismissed.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)