

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 5827 of 2024

Jamiruddin Ahamed and Anr.

versus

**West Bengal State Electricity Distribution Company Ltd. &
Ors.**

For the Petitioner

: Mr. Ekramul Bari
: Sk. Imtiaz Uddin
: Mr. Alauddin Ahmed

For the State

: Mr. Joydip Kar, Id. Sr. Adv.
: Dr. Madhusudan Saha Ray
: Ms. Jyoti Rauth

Heard on

: 30.07.2026

Judgment on

: 01.10.2026

Uploaded on

: 01.10.2026

Rai Chattopadhyay, J. :-

1. The petitioner says that on 29.11.1995 a meeting was held presided over by the Sabhapati, Hemtabad Panchayat Samiti, in presence of the land owners including the petitioner/his father and the respondent WBSEDCL authorities, over the issue of purchase of land for the project of the said respondent of construction of 33/11KV Sub-Station at Hemtabad. The petitioner further says that along with the other agenda of the meeting it has also been resolved on that day that the petitioner's candidature for a job opportunity

with the respondent authority would be recommended and considered by the respondent.

- 2.** The resolution dated 29.11.1995 has not been produced in the instant writ petition. However, several orders of both the respondent authority as well as this Court, in this regard, have been produced, the last of which, by the Director (HR) WBSEDCL, dated 30.01.2024, is challenged in the instant writ petition.
- 3.** In the said impugned order the respondent authority says that considering the educational qualification of the writ petitioner, he could not have been considered or appointed in the posts, for which the respondent has recruited personnel in the meantime, like for the posts of Assistant Engineer & Junior Engineer in different disciplines, Assistant Manager (HR&A) & (F&A), Jr. Executive (Finance), Office Executive, Junior Operating Technician Cum Technical Assistant, Pharmacist and Medical Officer. It further says that, as and when it initiates a process of recruitment for a post, to which the petitioner would be eligible as per his qualification, his candidature would be considered by the respondent authority. The respondent acknowledges the repeated orders of this Court, regarding appointment of the writ petitioner in terms of resolution dated 29.11.1995, and asserts its willingness to comply with the same.
- 4.** Mr. Bari learned advocate for the writ petitioner has submitted that it is the dilatory and avoiding tactics of the respondent authority, that the petitioner is yet to be given appointment with the same. He submits that by this way the respondent authority has made flagrant violation of the

repeated orders of this Court in this regard. Mr. Bari strongly relies on this Court's orders dated 01.03.2016 [in WP No. 2685 (w) of 2016] and dated 25.4.2023 [in WPA No.2654 of 2022]. He also relies on the Appeal Court's order dated 8.12.2023 [in MAT No. 1134 of 2023]. His contention is that as per the direction of the Court, the respondent authority is to allow relaxation/concession as regards the eligibility criteria in case of the petitioner, which the respondent neither has allowed nor is intended to allow, as it appears from the impugned order dated 30.1.2024.

- 5.** Mr. Bari further submits that the respondent suppresses the very material fact in this case that in 2017 as well as in 2018, the respondent authority has undertaken recruitment processes for the posts of Class-III staff, for which the writ petitioner ought to have been considered, being adequately qualified. However, the respondent authority has not done so. According to the petitioner, this reflects that the respondent authority has no bona fide intention to comply with the Court's orders passed in this regard, as mentioned above. According to the writ petitioner, it is only arbitrary inaction of the respondents to comply with the Court's orders and unfair and high-handed stubbornness, which have restrained the writ petitioner to harvest the fruit of several Court orders in his favour. Hence, he submits that the petitioner seeks an order of appointment in the instant writ petition.
- 6.** The above contention and prayer of the writ petitioner is strongly opposed by Mr. Kar learned Senior Advocate, appearing for the respondent authority. He has firstly submitted that the impugned order is an innocuous one, the respondent having acknowledged the petitioner's right for

being considered for appointment with the respondent, as against a suitable vacancy, as per his qualification. According to Mr. Kar, learned Senior Counsel, relaxation has never been allowed to the petitioner by the Courts, as regards his qualification, but it can be counted only as regards the age of the petitioner, if at all. He reiterates as stated in the impugned order dated 30.01.2024, that no recruitment has been held yet for a suitable post of commensurate eligibility criteria as regards qualification, as that of the writ petitioner.

7. He has demonstrated the respondent's bona fide, that in the impugned order, the respondent did not close the doors for the writ petitioner but only postpones his consideration for appointment till availability of a suitable post in accordance with his qualification.
8. Mr. Kar learned Senior Counsel has submitted that while exercising power of judicial review the Court cannot assume seat of an appellate forum thereby entering into interfering with the conclusions arrived at by the authority in the case of the petitioner. He indicates that in that case the Court's power is limited to assess statutory violation or palpable illegality or manifest arbitrariness or irregularity in the process of decision making by the authority, which is not traceable in the instant case, he says. To buttress his such argument, Mr. Kar learned Senior Counsel has referred to the judgments of the Supreme Court in ***State of Karnataka versus N. Gangaraj [AIR 2020 SC 1878]*** and in ***Haryana Urban Development Authority and Another versus Roochira Ceramics and Another [(1996) 6 SCC 584]***. Hence, he submits that there is only scanty or no scope for

this Court to interfere into the order of the authority as impugned.

9. Mr. Kar learned Senior Counsel has further relied upon ***M.P. State Cooperative Bank Limited Bhopal versus Nanuram Yadav and Others*** reported in ***(2007) 8 SCC 264***, and the portion thereof where the Court has laid down the principles to be followed in the matter of public appointments. It is submitted that these are settled principles in case of public appointments, which the respondent authority is obliged to mandatory follow.
10. The petitioner also relies on a Supreme Court decision in ***Union of India and Others versus Bali Ram*** reported in ***2026 SCC OnLine SC 1319*** and says that the Court has held that Article 226 is the reservoir of equity meant to reach injustice wherever it is found and that technicalities cannot trump substantive justice.
11. The background fact of the case reveals from the submissions made on behalf of the respective parties and on perusal of records that, the respondent authority floated a project for construction of electric sub-stations. For the said purpose it purchased land from the owners, including the father of the petitioner. The price etcetra was fixed vide the resolution dated 29.11.1995, wherein the parties also came to a consensus of opinion that the petitioner may be considered for appointment with the respondent authority. Though the resolution as above has not been produced in the instant case, however, the fact as above has remained unchallenged and accepted.

12. On 9.10.2012 and 15.5.2014, the respondent authority passes orders rejecting the petitioner's prayer for appointment. Thereafter the Court passes the order dated 01.03.2016 [in WP No. 2685 (w) of 2016]. In its order dated 01.03.2016, this Court has recognized that as per the resolution dated 29.11.1995, the respondent, in consideration of the several persons agreeing to sell their lands at a concessional rate to it, agreed that the poorest of the concerned families should be considered for a job with the respondent. The Court also noticed that since 2005, the present petitioner has been pursuing an employment with the respondent. The Court noticed that some villagers were convinced by the revenue and other officials to surrender their lands at a concessional rate for setting up a project in public interest. That, since the villagers including the predecessor of the present petitioner did not insist for the acquisition procedure which could have taken a considerable period of time, the Court found that the respondent obtained considerable benefit on account of the gesture of the petitioner. The Court further holds that when the respondent which primarily works towards discharging public duty purchases land at a concessional rate against a promise of considering one of the family for future employment, at least the consideration must be evident. The Court has considered this to be special circumstance and held that the respondent ought to have facilitated participation of the present petitioner in any recruitment process, subject to eligibility and other criteria that govern such process. Hence, the Court disposed of the writ petition directing the present petitioner to submit his bio-data, indicating his age educational qualification etcetra, to the respondent. The Court further

directed that candidature of the present petitioner in the relevant recruitment process will be considered by giving him weightage as a reserved category candidate with maximum concession permissible under the Rules, irrespective of whether the candidate is eligible for such concession. Most importantly, the Court also directed that the respondent will be obliged to inform the present petitioner of the next recruitment conducted, where the petitioner may be eligible to apply.

- 13.** This order of the Court dated 1.3.1016 has reached finality and stood binding upon the parties, the same being unchallenged and accepted by the parties. On this order of the Court Mr. Kar learned Senior Counsel has submitted firstly that the Court directed to follow the Rules and no direction was issued to give appointment in exception of the Rules; secondly that relaxation or exception even if could be granted, should have been with respect to the age limit of the petitioner and with regard to the qualification required for the post. This argument was made pursuant to the respondent's stand that no recruitment process has been undertaken since thereafter by the respondent to accommodate the petitioner in terms of his educational qualification. This Court will discuss later as to why these arguments are not acceptable.
- 14.** Fact remains that in 2017 and 2018, the respondent authority conducts recruitment for the Class-III category of posts, though neither informs the petitioner about the same nor does consider the petitioner's candidature there, despite the order of the Court dated 01.03.2016 having remained in vogue. Recruitment for several other category of posts was also done by the respondent authority in the meantime,

eligibility criteria of which, according to the said respondent, does not tally with the educational qualification of the petitioner.

- 15.** The petitioner further challenges the respondent's alleged inaction in writ petition No. WPA 2654 of 2022 and the Court passes an order dated 25.4.2023, holding inter alia that the petitioner's candidature was to be considered as a reserved category candidate and by affording him maximum concession permissible under the Rules, whether or not the candidate was eligible for such concession. The Court has further held that age of the petitioner should be considered as on the date of his original application, that is, on 30.12.2011, to grant him maximum relaxation in this regard. The Court further directed for immediate consideration of the petitioner's prayer for recruitment, within 6 weeks from the date of granting him an opportunity of hearing. The Court also stipulated the time period within which the petitioner was to be appointed, had the respondent authority considered his prayer favourably.
- 16.** The Appeal Court passed its order dated 8.12.2023 inter alia affirming the above order of the Single Judge, when the said order of the Single Bench was challenged in an appeal (No. MAT 1134 of 2023). The Appeal Court in the said order had declined to accept the submission of the respondent that no recruitment process was initiated in which the present petitioner would have been eligible to apply, hence relegation of the matter to the authority by the Court was not proper.
- 17.** Now the respondent authority has come up to issue the said impugned order dated 30.1.2024, rejecting the petitioner's

candidature, as if for the time being and as if the same may be considered by the respondent in future. Let the rationale be articulated as to why the portrayal by the respondent authority is misleading, asserting its genuine intention to adhere to the Court's directive by contemplating the petitioner's application for future appointment while currently dismissing it on the purported basis of insufficient qualifications. Before that, this Court may notice the grounds mentioned in the said impugned order, which is as follows:

"REASONED ORDER :

Upon strict compliance of the solemn order passed in the above referred matters I, Avijit Kumar Latua, the Director (HR), WBSEDCL being the Respondent No.3 in WPA 2654 of 2022 requested both the petitioners for appearing in the hearing held on 18.01.2024 & both the petitioners were present. They submitted a bio-data along with some documents from which it appears that the petitioner No.2 Habib Ahamed posses the following qualification:

- 1. B.A. (Hons) in English - 43.75%***
- 2. Higher Secondary -47.3%***
- 3. One year Diploma course in Information Technology Application from Hemtabad Youth Computer Training Centre.***

The same documents were submitted by them earlier also.

The writ petition being WP 2685(w) of 2016 was disposed of on 01.03.2016 by Hon'ble Justice Sanjib Banerjee inter alia with the following direction: ".....permitting the petitioner or the petitioner's son to furnish his bio-data, indicating his age, educational qualifications and the like to the Senior Manager (HR&A,) Employee services & ER-II of Distribution Company within a week from date. Such official along with Director (HR) of the Distribution Company will be obliged to inform both the petitioner and the petitioner's son of the next recruitment conducted by the Distribution Company whereat the petitioner's son may be eligible to apply. The candidature of the petitioner's son in the relevant recruitment process will be considered by giving him weightage as reserved category candidate with the maximum concession

permissible under the rules, irrespective of whether the candidate is eligible for such concession.

If after all that, the petitioner's son is unable to qualify for appointment, nothing further need be done."

However, on examination of office records it is found that since the date of passing of solemn order dated 01.03.2016 passed by Hon'ble Justice Sanjib Banerjee, WBSEDCL has undertaken process for recruitment from open market for the post of Assistant Engineer & Junior Engineer in different disciplines, Assistant Manager (HR&A) & (F&A), Jr. Executive (Finance), Office Executive, Junior Operating Technician Cum Technical Assistant, Pharmacist and Medical Officer. The required educational qualifications for the above posts are given here under:

Post	Required qualification (in brief)
Assistant Engineer	Full time B.E./B.Tech/B.sc (Engineering) degree in different disciplines.
Assistant Manager (HR&A) & (F&A)	Graduate in any discipline & MBA(two years)
Jr. Executive (Finance)	Graduate in any discipline & Inter CA/ICWA.
Junior Engineer	Full time 3 years Diploma in Electrical/Civil/ Mechanical.
Office Executive	Graduation in any discipline with 50% marks in aggregate from a recognized university or graduation in any discipline with 50% marks in HS level and must have passed 1(one) years prescribed computer course.
Junior Operating Technician Cum Technical Assistant	Madhyamik or equivalent and trade certificate under NCTVT.
Pharmacist	Diploma in pharmacy from recognized Institute by AICTE

Medical Officer	MBBS degree from recognized university
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However, it is observed that the applicant did not fulfill criteria for being eligible for any of the aforesaid posts. The applicant did not possess the minimum criteria of 50% marks in HS or graduation examination and thus he also did not come within the zone of consideration for the post of Office Executive also, therefore on the above score the petitioners were not informed or called.

In view of the above the petitioner could not be considered for recruitment against any post for which open market recruitment process have been undertaken by WBSedCL so far and hence his prayer could not be considered for employment at this juncture.

The petitioner however can be considered for the post of Technical Support Hand (Trainee) as and when open market recruitment to the said post is undertaken considering his educational qualification.

At present there is no ongoing open market recruitment process or contemplated open market recruitment process in the said post where the petitioner can be considered for employment in terms of his educational qualification, as per the recruitment rule of the company. As and when vacancy is declared in the said post and open market recruitment is undertaken, the petitioner will be consequentially informed and his candidature shall be considered for the said post in terms of solemn order dated 01.03.2016 passed by Hon'ble Justice Sanjib Banerjee read with the solemn order dated 25.04.2023 of Hon'ble Justice Lapita Banerji and solemn order dated 08.12.2023 passed by Hon'ble Division Bench.

Hence the prayer of the petitioner is rejected upon due consideration at this stage."

- 18.** In its order dated 01.03.2016, this Court has recognized that as per the resolution dated 29.11.1995, the respondent, in consideration of the several persons agreeing to sell their lands at a concessional rate to it, agreed that the poorest of the concerned families should be considered for a job with the respondent. The Court also noticed that since 2005, the present petitioner has been pursuing an employment with the respondent. The Court noticed that some villagers were

convinced by the revenue and other officials to surrender their lands at a concessional rate for setting up a project in public interest. That, since the villagers including the predecessor of the present petitioner did not insist for the acquisition procedure which could have taken a considerable period of time, the Court found that the respondent obtained considerable benefit on account of the gesture of the petitioner. The Court further holds that when the respondent which primarily works towards discharging public duty purchases land at a concessional rate against a promise of considering one of the family for future employment, at least the consideration must be evident. The Court has considered this to be special circumstance and held that the respondent ought to have facilitated participation of the present petitioner in any recruitment process, subject to eligibility and other criteria that govern such process. Hence, the Court disposed of the writ petition directing the present petitioner to submit his bio-data, indicating his age educational qualification etcetra, to the respondent. The Court further directed that candidature of the present petitioner in the relevant recruitment process will be considered by giving him weightage as a reserved category candidate with maximum concession permissible under the Rules, irrespective of whether the candidate is eligible for such concession. Most importantly, the Court also directed that the respondent will be obliged to inform the present petitioner of the next recruitment conducted, where the petitioner may be eligible to apply.

- 19.** This order of the Court dated 1.3.1016 has reached finality and stood binding upon the parties, the same being

unchallenged and accepted by the parties. On this order of the Court Mr. Kar learned Senior Counsel has submitted firstly that the Court directed to follow the Rules and no direction was issued to give appointment in exception of the Rules; secondly that relaxation or exception even if could be granted, should have been with respect to the age limit of the petitioner and with regard to the qualification required for the post. This argument was made pursuant to the respondent's stand that no recruitment process has been undertaken since thereafter by the respondent to accommodate the petitioner in terms of his educational qualification. This Court will discuss later as to why these arguments are not acceptable.

- 20.** Having considered the rival submissions and the materials on record, this Court is of the view that the controversy cannot be examined merely as a claim for appointment simpliciter, or as an ordinary claim of a candidate seeking entry into public employment. The claim of the petitioner has its genesis in a particular and exceptional factual and legal setting. The predecessor-in-interest of the petitioner parted with his land for the project of the respondent, not merely upon the ordinary incidents of a private sale, but in the backdrop of the resolution dated 29.11.1995 and the assurance contained therein that one of the poorest members of the affected family would be considered for employment. The said factual foundation was noticed by this Court in its order dated 01.03.2016. It was specifically recorded that the land had been made available to the respondent at a concessional rate and that, in consideration thereof, the candidature of the petitioner was required to be facilitated in a recruitment process. The Court, therefore, directed not merely a general

consideration of the petitioner but imposed a positive obligation upon the respondent to inform the petitioner of the next recruitment in which he might be eligible to participate and further directed that his candidature would receive the benefit of weightage as a reserved-category candidate with the maximum concession permissible under the Rules, irrespective of whether he would otherwise be entitled to such concession. The order dated 01.03.2016 has attained finality. It was neither challenged nor modified and consequently constituted a binding adjudication governing the rights and obligations of both parties. The respondent could not, therefore, treat the direction contained therein as a mere observation or as an invitation to reconsider the petitioner's case at some indefinite future point of time. The operative substance of the order was that, whenever a recruitment process was undertaken in which the petitioner could participate, the respondent was under an obligation to bring that recruitment to the petitioner's notice and to consider his candidature in accordance with the special conditions expressly stipulated by the Court. The subsequent orders dated 25.4.2023 and 8.12.2023 further reinforced that obligation, including the direction for maximum permissible concession and consideration of the petitioner's age with reference to his original application.

- 21.** Against that background, the fact that the respondent itself conducted recruitment to Class-III posts in the years 2017 and 2018 assumes decisive significance. The respondent has not disputed that such recruitment processes were undertaken. What is material is that the petitioner was neither informed of those recruitment processes nor

permitted to place his candidature for consideration therein, notwithstanding the subsistence of the order dated 01.03.2016. The omission, therefore, was not an inconsequential administrative lapse. It went to the very heart of the mechanism prescribed by the Court for protecting the petitioner's right. The order of 01.03.2016 specifically required the respondent to inform the petitioner of the next recruitment in which he might be eligible to apply; yet the respondent, while undertaking Class-III recruitment, did not communicate the same to him. This omission is rendered still more serious by the contents of the impugned order dated 30.01.2024. In that order the respondent proceeded upon the basis that, after the order dated 01.03.2016, recruitment had taken place for several posts but that the petitioner did not fulfil the prescribed qualifications for those posts, and consequently he had not been informed or called. The order then proceeded to state that the petitioner might be considered for the post of Technical Support Hand (Trainee) when recruitment to that post was undertaken. What is conspicuously absent from this narration is any disclosure of the recruitment conducted in the years 2017 and 2018 for Class-III posts. The omission is material because Class-III recruitment was precisely the kind of recruitment which required the respondent to examine the petitioner's candidature in the light of the special direction of this Court. The respondent cannot disclose only such recruitments as suit its ultimate conclusion and remain silent about a recruitment process which directly attracted the obligation created by the order of 01.03.2016. In the circumstances, this Court is unable to accept the respondent's subsequent portrayal that there had been no

recruitment process in which the petitioner could have been considered. The record demonstrates otherwise. The respondent's failure to disclose the Class-III recruitment of 2017 and 2018, despite the subsistence of the order dated 01.03.2016, amounts to suppression of a material fact bearing directly upon the decision-making process. It also constitutes a failure to comply with the positive obligation imposed upon the respondent by the said order. The significance of the omission cannot be diluted by describing the impugned order as an innocuous or temporary rejection.

- 22.** The consequence of the aforesaid omission is also required to be examined from the standpoint of the right which had accrued to the petitioner by reason of the order dated 01.03.2016. Had the petitioner been informed of the Class-III recruitment of 2017 or 2018, he would have had an opportunity to place his candidature before the recruiting authority and to avail himself of the special benefits directed by the Court, namely, weightage as a reserved-category candidate and the maximum concession permissible under the Rules. The respondent cannot be permitted to take advantage of its own failure to communicate the recruitment and thereafter contend that the petitioner has no enforceable claim because he did not participate in that recruitment. The law does not permit a public authority to rely upon a state of affairs which has been brought about by its own breach of a legal and judicial obligation. The expression “maximum concession permissible under the Rules, irrespective of whether the candidate is eligible for such concession”, occurring in the order dated 01.03.2016 assumes much importance. It was not left to the respondent to decide afresh

whether the petitioner deserved the concession. That question had already been answered by the Court. Similarly, the direction to inform the petitioner of the next recruitment was not directory in character. It was intended to ensure that the petitioner did not lose the very opportunity which the Court had directed the respondent to provide. The subsequent order dated 25.4.2023 expressly reiterated the same principle and the Division Bench, by order dated 8.12.2023, declined to accept the respondent's contention that there had been no recruitment process in which the petitioner could have been eligible.

- 23.** There is, therefore, a fundamental distinction between a case in which a person seeks appointment merely on the strength of an assurance or concession made by the State and the present case. The respondent cannot rely upon the general proposition that public employment must ordinarily be offered in accordance with the prescribed recruitment process, as an answer to the present claim, because the petitioner's right was required to be worked out through the very recruitment process in accordance with the special conditions already judicially determined. Now by saying so, the Court is not creating a new mode of public recruitment. The special nature of this case requires enforcement of the legal consequences of an existing and final judicial determination, which the respondent was bound to obey. The respondent is an instrumentality of the State and its actions must conform to the discipline of Article 14 of the Constitution. Every action of a State instrumentality must be informed by reason and fairness; arbitrariness, unequal treatment and disregard of relevant considerations are

amenable to judicial review. In ***Mahabir Auto Stores v. Indian Oil Corporation Ltd*** reported in **(1990) 3 SCC 752**, the Supreme Court held that the action of a State instrumentality, even in matters having a contractual or commercial complexion, must satisfy the requirements of reasonableness, fair play, natural justice and non-arbitrariness. Likewise, in ***Kumari Shrilekha Vidyarthi v. State of U.P.*** reported in **(1991) 1 SCC 212**, the Supreme Court recognised that State action having a public element cannot be immunised from Article 14 of the Constitution, merely because it arises in a contractual or executive setting.

- 24.** The Supreme Court in ***Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh*** reported in **(1979) 2 SCC 409** made it clear that the Government is not immune from the principle of promissory estoppel merely because the promise emanates from the executive sphere. Where a representation or promise is made with the intention that it should be acted upon and the promisee alters his position in reliance upon it, the Government may be held bound by that promise, subject always to the overriding requirement that enforcement cannot compel an act prohibited by law or demonstrably contrary to overriding public interest. The principle is not invoked here to compel The respondent authority is not compelled to do something prohibited by its recruitment rules; rather, is prevented from defeating an obligation which arose from its own representation and which was subsequently translated into a specific judicial direction.
- 25.** The circumstances attending the transfer of the land make the equitable dimension of the matter particularly compelling. This was not an ordinary commercial transaction in which

the owner freely bargained for the highest available consideration and thereafter sought an additional advantage. The material noticed by this Court in the order dated 01.03.2016 records that villagers, including the predecessor of the petitioner, were persuaded to make their lands available at a concessional rate for establishment of the respondent's public project, instead of insisting upon the acquisition procedure which could have involved considerable delay. The respondent thereby obtained a public project site and the benefit of the landowners' cooperation, while the affected family was left with the corresponding expectation that the poorest member of the family would be considered for employment. When a State instrumentality obtains a citizen's property at a concessional rate in the context of a representation that a member of the affected family would be considered for employment, the representation is not an incidental statement having no legal consequence. It forms part of the factual and equitable circumstances in which the citizen altered his position. The State, having secured the benefit of such cooperation, cannot thereafter retain the benefit while repudiating, diluting or indefinitely postponing the corresponding obligation. Such conduct would offend not merely the doctrine of promissory estoppel but the broader constitutional requirements of fairness, non-arbitrariness, legitimate expectation and rule of law.

- 26.** The principle that a person cannot take advantage of his own wrong has particular application here. The respondent's omission deprived the petitioner of the opportunity to participate at the point of time when the recruitment process was actually available. Having caused that deprivation, the

respondent cannot subsequently rely upon the passage of time, alteration of recruitment conditions or the absence of a presently advertised vacancy as reasons for defeating the petitioner's claim. To permit such a course would enable the respondent to convert its own breach into a defence against enforcement. Such a result would reduce the solemnity of judicial directions to an empty formality and would permit a State instrumentality to defeat a citizen's right through administrative inaction. The petitioner also possessed the requisite educational qualification for the Class-III recruitment which the respondent conducted in 2017 and 2018. The very foundation of the respondent's impugned decision—that no recruitment had taken place for a post commensurate with the petitioner's qualification—therefore becomes unsustainable once the Class-III recruitment is taken into account. The petitioner was not seeking to be placed in a post for which he admittedly lacked the requisite qualification. His grievance is that when a recruitment was undertaken for a category for which he was qualified, the respondent failed to inform him and thereby frustrated the very opportunity which the Court had directed it to provide.

- 27.** In these peculiar circumstances, the right which initially arose as an enforceable right of consideration has, by the subsequent conduct of the respondent and the suppression of the material recruitment process, moved beyond the stage of a mere abstract or contingent expectation. The petitioner had a judicially recognised right to participate in the relevant recruitment with the prescribed weightage and maximum permissible relaxation. That opportunity was lost solely because of the respondent's failure to comply with the

binding direction. The petitioner cannot now be placed in the same position as an ordinary applicant who voluntarily failed to apply. In substance, the respondent prevented the condition upon which the petitioner's consideration was predicated from ever occurring. Equity and constitutional fairness therefore require that the petitioner be placed, so far as practicable, in the position in which he would have stood had the respondent complied with the order dated 01.03.2016. The Court is conscious that public employment ordinarily attracts the requirements of Articles 14 and 16 of the Constitution and that a writ court cannot ordinarily direct appointment merely on the basis of sympathy, concession or a private promise. But the relief contemplated herein does not rest upon sympathy. Nor does it create a general right in favour of land-losers to seek appointment dehors the recruitment rules. The present case rests upon a narrow and exceptional combination of circumstances:- the respondent's acquisition of the land in the backdrop of the promise recorded in the resolution dated 29th November, 1995; the final order dated 1st March, 2016 directing the respondent to facilitate the petitioner's participation; the subsequent reaffirmation of that direction by the orders dated 25th April, 2023 and 8th December, 2023; the petitioner's qualification for the Class-III recruitment; the actual conduct of such recruitment in 2017 and 2018; the respondent's failure to inform the petitioner thereof; and the consequent frustration of the very right which this Court had protected.

- 28.** It is in this narrow sense that the petitioner's right to appointment can now be said to have crystallised. The Court is not retrospectively conducting a selection which never took

place. Rather, the Court is required to prevent the respondent from profiting from its own non-compliance with a binding judicial mandate. Once it is established that the petitioner was qualified for the Class-III recruitment and that he was wrongfully excluded from the opportunity of consideration despite a specific judicial direction, the subsequent passage of time cannot be permitted to extinguish the right which was lost by reason of the respondent's own default. The respondent cannot first deny the petitioner the opportunity of consideration and thereafter contend that the opportunity no longer exists. The power under Article 226 is sufficiently wide to mould relief in order to secure complete justice and to prevent an administrative authority from defeating a judicially recognised right by its own inaction. While the ordinary rule is that mandamus issues to compel performance of a public duty where a corresponding legal right exists, the present case satisfies that principle because the respondent's duty arises not merely from an executive representation but from a binding judicial command governing the manner in which the petitioner's candidature was required to be dealt with. The classical limitation on mandamus, namely, that the Court cannot compel an authority to exercise a discretion in a particular manner where no legal right exists, cannot be employed as a shield by an authority which has already been directed by the Court to exercise its power in a particular legally prescribed manner and has failed to do so. The writ petitioner's claim arises from a final judicial determination which created a corresponding obligation upon the respondent and prescribed the precise manner in which the petitioner was to be considered. The

present relief is consequently directed towards enforcing, and not creating, the public obligation.

- 29.** The constitutional Court must also be mindful that the rule of law requires not only citizens but State instrumentalities to abide by their representations and, more importantly, by orders of the Court. If an authority can disregard a judicial direction to inform an eligible person of a recruitment process, suppress the occurrence of that recruitment, allow the process to conclude, and thereafter defeat the person's claim by pleading that the recruitment is over or that a suitable recruitment may take place at some uncertain future date, the result would be manifestly inequitable. It would permit administrative inaction to nullify judicial protection. Such a consequence is incompatible with the constitutional ethos of accountable government.
- 30.** The facts of the present case thus constitute a compelling instance for moulding the relief under Article 226. The petitioner had already been recognised as falling within a specially protected class for the purpose of consideration; the respondent had been directed to notify him of the relevant recruitment; the respondent admittedly conducted Class-III recruitment in 2017 and 2018; the petitioner was not informed; his candidature was consequently never considered; and the respondent's subsequent decision failed to disclose that material circumstance. In such circumstances, a mere direction to “consider” the petitioner in some future recruitment would perpetuate the very injustice which has continued for years and would reward the respondent for its own failure to comply with the judicial mandate. Accordingly, this Court is satisfied that the present

case is not one where the petitioner is merely asking the Court to substitute its discretion for that of the appointing authority. The essential eligibility and the special mode of consideration have already been judicially recognised. What has been frustrated is the opportunity which the petitioner was entitled to receive. The Court is, therefore, empowered in exercise of its jurisdiction under Article 226 to issue a mandatory direction so as to give meaningful effect to the orders already passed and to prevent the respondent from taking advantage of its own wrong.

- 31.** For the aforesaid reasons, the impugned order dated 30.1.2024 cannot be sustained. The respondent cannot be permitted to rely upon its failure to inform the petitioner of the Class-III recruitment undertaken in 2017 and 2018, nor can it indefinitely postpone the petitioner's claim by directing him to await some future recruitment. The petitioner's candidature is required to be given effect to in accordance with the order dated 01.03.2016, read with the subsequent orders dated 25.04.2023 and 08.12.2023, including the benefit of the prescribed weightage and maximum permissible relaxation. In the exceptional facts of the present case, and in order to ensure that the petitioner does not suffer for the respondent's admitted failure to comply with the judicial mandate, a mandatory direction for appointment in an appropriate Class-III or any other subordinate post, subject to verification of the petitioner's identity, original qualification and other formal requirements consistent with the aforesaid judicial orders, would constitute the effective and lawful relief. The critical feature of the case is that the respondent was under a specific, final and binding judicial obligation to

inform the petitioner of the next recruitment in which he could participate, and the respondent admittedly conducted Class-III recruitment in 2017 and 2018, but did not inform or consider him. The respondent's subsequent stand that no suitable recruitment had taken place therefore becomes materially misleading and having a destructive effect upon the judicial protection granted to the petitioner. By saying so, the Court is not creating a general exception to Articles 14/16 of the Constitution, but is granting exceptional mandatory relief to undo the consequence of the respondent's own breach of a final judicial direction.

32. The entire discussion as made above prompt this Court to allow the instant writ petition, with the following directions:

- i.* The impugned order dated 30.01.2024 passed by the Director (HR) WBSedCL is set aside.
- ii.* Let the respondent immediately appoint the writ petitioner in an appropriate Class-III or any other subordinate post subject to verification of his identity, original qualification and other formal requirements consistent with the judicial orders passed earlier in connection with the prayer of the petitioner.
- iii.* The respondent authority/Senior Manager (HR & H) Employees Services and ER-II/Director (HR)/The Chairman as the case may be, is directed to comply with the order as above, maximum within a period of three (03) weeks from the date of communication of this order.

33. The writ petition No. WPA 5827 of 2024 is allowed and disposed of.

- 34.** Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)