IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

PRESENT:
THE HON'BLE JUSTICE UDAY KUMAR

WPA 3601 OF 2021

GOUTAM GHOSH
-VS-
STATE OF WEST BENGAL AND ORS.

For the Petitioner	: Mr. Indranath Mitra
For the State	: Mr. Sukanta Ghosh Mr. Arghya Chatterjee
For the Bankura Zilla Parishad	: Mr. Soumik Ganguli
For the Respondent No.10	: Mr. Debashis Saha Mr. Avirup Roy Sanyal Ms. Scheta Pal Mr. Jyotishman Saha
Reserved on	: 12.10.2026
Pronounced on	: 15.10.2026

UDAY KUMAR, J.: –

1. This constitutional writ petition comes up for final adjudication before this Court upon remand by an Hon'ble Division Bench vide order dated February 17, 2022, passed in MAT 401 of 2021 along with MAT 419 of 2021. By the said appellate order, earlier interim directions were set aside solely on the ground of non-observance of the principles of natural justice regarding the non-joinder of the added respondent no.

10 at the nascent stage, and the matter was remitted back for a fresh hearing on merits upon completion of affidavits.

2. The petitioner, Shri Goutam Ghosh, was serving as an Upper Division Assistant (UDA) under the Bankura Zilla Parishad. He stood at Serial No. 2 in the feeder gradation list published in 2019, whereas the added Respondent No. 10, Smt. Nandita Mondal, occupied the top position (Serial No. 1) in the said gradation list. To fill up an existing vacancy in the promotional post of Head Assistant of the Bankura Zilla Parishad, a selection process was initiated. In terms of the notification issued by the Parishad (Annexure P-7), a written examination carrying 50 marks was conducted on December 29, 2019, involving the senior-most UDAs.

3. Upon publication of the results, it transpired that the writ petitioner secured the highest marks, thereby occupying the 1st position in the written examination merit list. Conversely, Respondent No. 10 secured lower marks but claimed entitlement to promotion to the post of Head Assistant by virtue of her seniority at Serial No. 1 in the feeder gradation list. Acting under the administrative cushion of executive memorandums, the official respondents overlooked the petitioner's top merit rank in the said written test and issued an order of promotion dated February 22, 2021, in favour of Respondent No. 10. Aggrieved thereby, the petitioner instituted the instant writ petition invoking the extraordinary writ jurisdiction of this Court. It is an admitted position on record that during the pendency of these protracted legal proceedings, both the writ petitioner and the added Respondent No. 10 have reached the age of superannuation and retired from service.

4. Mr. Indranath Mitra, learned counsel appearing for the writ petitioner, forcefully contended that the entire selection process, insofar as it bypassed the petitioner's merit, is vitiated by patent illegality and runs counter to the statutory rules governing the field. He submitted that the promotion granted to Respondent No. 10 violates Rule 4(VII)(b) of the West Bengal Panchayat (Recruitment and Conditions of Appointment of Employees of Zilla Parishad) Rules, 1997 (hereinafter referred to as the 'said Rules of 1997'), framed under Section 224 of the West Bengal Panchayat Act, 1973. Drawing attention to said Rule 4(VII)(b) thereof, he pointed out that the post of Head Assistant is required to be filled up by promotion from amongst UDAs and Accountants selected strictly on the basis of "merit-cum-seniority".

5. Relying upon the authoritative pronouncement of the Hon'ble Supreme Court in *B.V. Sivaiah & Ors. v. K. Addanki Babu & Ors., [(1998) 6 SCC 720]*, Mr. Mitra argues that under a "merit-cum-seniority" regime, merit is the paramount and dominant consideration, and seniority plays only a secondary, tie-breaking role when competing candidates possess roughly equal merit. Finally, relying upon the ratio of this Court in *Chinmoy Dey v. The State of West Bengal & Ors., [2014 SCC OnLine Cal 15868]*, he submits that subordinate executive circulars or memorandums cannot override, dilute, or restrict the substantive mandate of statutory rules framed under legislative authority. Learned counsel therefore prays for setting aside of the order of promotion dated February 22, 2021 in favour of the Respondent no. 10.

6. *Per contra*, Mr. Sukanta Ghosh, learned counsel appearing for the State, ably supported by Mr. Soumik Ganguli, learned counsel for the Bankura Zilla Parishad, and Mr. Debashis Saha, learned counsel for the added Respondent No. 10, submitted that the selection process was conducted in absolute conformity with the prevailing executive policy guidelines issued by the competent authority of the State Government. He argued that while Chapter II of the 1997 Rules broadly specifies "merit-cum-seniority" as the benchmark for promotion to the post of Head Assistant from the feeder post of UDA, the statutory rules themselves did not outline a definitive methodology, syllabus, or standard metric for assessing and quantifying "merit". Consequently, to bridge this operational vacuum and ensure transparent uniformity across Zilla Parishads, the State Government, in exercise of the power conferred under Rule 10 of the said Rules of 1997, framed a comprehensive policy vide Government Order bearing Memo No. 3734/PN/O/III/2E-62/09 dated July 3, 2012, subsequently supplemented by Government Order bearing Memo No. 499/PN/O/III/2E-62/09 dated March 7, 2017.

7. Placing strong reliance on Paragraph 8 of the Government Order dated July 3, 2012, learned counsel for the State contended that the written examination of 50 marks was explicitly structured only as a screening mechanism requiring a minimum qualifying threshold of 15 marks and not as an elimination test for determining relative rank or seniority in the promotional post. Once eligible candidates cross the qualifying benchmark, their *inter-se* seniority and placement in the promotional

cadre must be determined solely on the basis of their standing in the existing feeder post gradation list. He urged that these memorandums operated as legitimate administrative scaffolding designed to give practical shape and workable machinery to the statutory concept of "merit-cum-seniority" under the said Rule 4(VII)(b) of the said Rules of 1997. Thus, the promotion of Respondent No. 10, who possessed superior rank in the existing gradation list of the feeder posts and unblemished Annual Performance Reports (APRs), is fully sustainable in law.

8. I have heard the learned counsel appearing for the respective parties at length, perused the pleadings, and carefully examined the statutory rules, the executive Government Orders, and the judicial authorities cited across the bar.

9. The core issue that falls for determination in this writ petition is, *whether an executive memorandum or government circular can legally override, restrict, dilute, or alter the substantive mandate of a statutory rule which explicitly prescribes promotion on the basis of "merit-cum-seniority".*

10. The legislative power to frame binding rules regarding recruitment and conditions of service of Zilla Parishad employees flows directly from Section 224 of the West Bengal Panchayat Act, 1973. It is a cardinal, well-settled principle of administrative law and service jurisprudence that subordinate executive circulars, administrative memorandums, or departmental clarifications cannot override, amend, restrict, or dilute substantive statutory rules. While an executive instruction can fill up

operational gaps or provide procedural machinery where a statute is silent, it can never run counter to the express mandate of a statutory rule. Any administrative order issued by the executive branch derives its validity entirely from its delegated legislative source and must strictly conform to the parent statute and rules framed thereunder.

11. To appreciate the statutory architecture governing the field, it is apposite to reproduce Rule 4(VII) of the West Bengal Panchayat (Recruitment and Conditions of Appointment of Employees of Zilla Parishad) Rules, 1997, hereinbelow:

> **"Rule 4(VII). Head Assistant**
> *(a) Scale of Pay: (As prescribed under the applicable revision of pay and allowances structure/pay bands)*
>
> *(b) Method of Recruitment: By promotion from amongst the Upper Division Assistants and the Accountants selected on the basis of merit-cum-seniority.*
>
> *(c) Appointing Authority: Executive Officer."*

12. It is evident that the parent statutory rule unequivocally mandates that promotion to the post of Head Assistant shall be effected on the basis of "merit-cum-seniority". However, to bridge perceived administrative gaps in evaluating merit, the State Government issued Government Order No. 3734/PN/O/III/2E-62/09 dated July 3, 2012. Paragraph 8 of the said G.O. stipulated as follows:

> *"8. The written examination shall be only for the purpose of screening and not for the purpose of elimination nor for determining their seniority in the promotional post. The seniority of promoted candidates shall be determined solely*

on the basis of the position of the qualifying candidate in the existing gradation list of the feeder post."

13. Furthermore, the Apex Court, in the case of *B.V. Sivaiah (supra),* while distinguishing between "seniority-cum-merit" and "merit-cum-seniority," authoritatively held at paragraph 9 of the report:

"9. The principle of 'merit-cum-seniority' lays greater emphasis on merit and ability and seniority plays a less significant role. Seniority is to be given weight only when merit and ability are approximately equal. …..

14. When Paragraph 8 of the 2012 Government Order is tested against the binding exposition of law laid down by the Hon'ble Supreme Court in *B.V. Sivaiah (supra),* the aforementioned executive clause stands in direct contradiction to settled jurisprudence that in the context of a promotion policy where merit-cum-seniority is the criterion, comparative merit of the candidates has to be evaluated and those who are found to be more meritorious are entitled to be promoted.

15. When an executive order attempts to redefine a statutory expression like "merit-cum-seniority" to mean its exact opposite, converting a merit-based evaluation into a pure seniority-driven exercise under the guise of a threshold screening test, such instructions are legally *non-est* to the extent of their inconsistency with the parent rules. To mandate a competitive examination, set a 50-mark syllabus, evaluate performance, and then discard the actual comparative scores of a candidate who objectively topped the merit list is arbitrary, unreasonable, and defeats the very purpose of a merit-based selection process. This principle was

aptly reinforced by this Court in *Chinmoy Dey (supra)*, wherein it was held that executive circulars cannot serve as an illegal fetter or embargo against a candidate's statutory right to promotion based on true merit.

16. Concluding the legal discussion made hereinabove, **Paragraph 8 of the Government Order dated July 3, 2012, to the extent that it makes feeder-cadre seniority the sole determinative factor while rendering comparative merit redundant,** is ultra vires of the said Rules of 1997 and legally non-est.

17. Applying these foundational legal principles to the facts of the present case, the writ petitioner, Shri Goutam Ghosh, participated in the competitive written examination conducted on December 29, 2019, and secured the highest marks, claiming the 1st position in the merit list. The added Respondent No. 10 secured lower marks but was granted promotion solely on the basis of her higher serial number in the feeder gradation list, relying on Paragraph 8 of the 2012 Government Order. This inversion of merit and seniority in the said Paragraph 8 directly violates Rule 4(VII) of the 1997 Rules and the binding ratio of *B.V. Sivaiah (supra)*. Therefore, the impugned promotion order dated February 22, 2021, cannot be sustained in the eye of the law and must be set aside to restore the sanctity of statutory rules and fair play in service jurisprudence.

18. Finally, this Court takes note of the admitted position that both the writ petitioner and the added Respondent No. 10 have reached the age of superannuation and retired from service during the pendency of these proceedings. However, retirement does not render the *lis* infructuous.

The petitioner's accrued legal right to fair consideration and promotion based on his superior merit; which was unlawfully denied to him in 2021, directly impacts his continuous service status, notional fixation of pay, pensionary benefits, and retiral dues.

19. In view of the foregoing discussions, concurrent findings, and authoritative legal principles, the writ petition being W.P.A. 3601 of 2021 is allowed with the following definitive orders and directions:

a) **Quashing of Impugned Promotion:** The impugned order of promotion dated February 22, 2021, promoting the added Respondent No. 10 (Smt. Nandita Mondal) to the post of Head Assistant under the Bankura Zilla Parishad, is hereby set aside and quashed.

b) **Protection of Retiral Benefits of Respondent No. 10:** Taking into humanitarian consideration the fact that Respondent No. 10 has already retired from service and discharged duties in the promotional post, it is directed that no recovery of salary or financial emoluments already disbursed to her during her tenure as Head Assistant shall be undertaken. However, her pensionary and retiral benefits shall be calculated on the basis of the substantive feeder post from which she drew her regular grade prior to the disputed promotion, or protected as a measure of equity without conferring permanent promotional seniority over the petitioner.

c) **Declaration of Petitioner’s Legal Entitlement:** It is declared that the writ petitioner, Shri Goutam Ghosh, having secured the

highest marks (1st position) in the competitive written examination held on December 29, 2019, was legally entitled to be promoted to the post of Head Assistant under the statutory "merit-cum-seniority" framework of Rule 4(VII) of the 1997 Rules, superseding the illegal denial by the official respondents.

d) **Mandatory Consequential Reliefs:** The competent authority of the Bankura Zilla Parishad and the District Level Selection Committee (DLSC) are directed to issue a notional order of promotion in favour of the writ petitioner (Shri Goutam Ghosh) to the post of Head Assistant with effect from February 22, 2021. The official respondents shall calculate his notional last drawn pay, revise his pension, gratuity, and all other retiral dues accordingly, and disburse the consequential arrears to the petitioner within a period of eight weeks from the date of communication of this order.

20. Pending applications, if any, are disposed of accordingly.

21. Interim orders, if any, stand vacated.

22. There shall be no order as to costs.

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

(Uday Kumar, J.)