IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

BEFORE:
HON'BLE JUSTICE RAJA BASU CHOWDHURY

WPO 1642 of 2022

Sourish Saha
Versus
The Learned Registrar General, High Court, Calcutta & Ors.

For the petitioner	:	Mr. Pinaki Dhole, Adv. Mr. Rabindra Kumar Pathak, Adv. Ms. Srijita Noe, Adv.
For the HC Administration	:	Mr. Sukanta Chakraborty, Adv.
For the State	:	Mr. Tapan Kr. Mukherjee, Sr. Adv. Mr. Somnath Naskar, Adv.
Heard on	:	05.12.2025, 19.12.2025, 09.01.2026, 30.01.2026, 27.03.2026, 02.04.2026, 21.8.2026 & 21.09.2026.
Judgment on	**:**	**21st September, 2026**.

RAJA BASU CHOWDHURY, J. :

1. The instant writ petition has been filed for direction upon the respondents so as to direct them to suitably amend and modify Rule 8(b)(1A), the second schedule Part C, serial No.3 of the method of recruitment of System Administrator, and the second schedule Part D, serial No.3 method of recruitment of Technical Assistants of the Calcutta High Court (Computer Technical Manpower for District Courts Recruitment) Rules,

2014 as amended by Memo. No. 3945-G dated 7th December, 2017 published by the Kolkata Gazette dated 5th February, 2018, and/or to make appropriate provisions for absorption of the petitioners in the post of System Administrator, according to their qualification within a specified period.

2. The instant writ petition was initially filed by two several petitioners. Unfortunately, during the pendency of the writ petition, the petitioner no.1 died on 20th March, 2024. Consequent upon his death and pursuant to an order passed by a Coordinate Bench of this Court on 29th April, 2024, the death of the petitioner no.1 has been recorded and his name has since been expunged from the cause title. The present writ petition is now confined to the petitioner no.2, who is now the only petitioner, and accordingly has been renamed as the petitioner in terms of the directions passed by the Coordinate Bench on 29th April, 2024.(For the sake of convenience the original petitioner no. 1 is hereinafter referred to as the deceased petitioner while the renamed petitioner as the petitioner). Since then, the writ petition has been assigned before this Court and has been heard.

3. The petitioner claims that the petitioner has passed the Madhyamik examination from the West Bengal Board of Secondary Education and the Higher Secondary examination from the West Bengal Council of Higher Secondary Education. He has graduated in B.Com. from the Calcutta University in the year 2001 and has obtained *Masters in Computer Application* (MCA) Certificate, from the Biju Pattanaik Technical

University. According to the petitioner, the learned Registrar General in-Charge and Member, Project Monitoring Committee, High Court, Calcutta published a Recruitment Notice No.1037 RG dated 2nd March, 2007, on the website of the Calcutta High Court, inviting applications for two posts of Technical Assistants, on contractual basis. The said recruitment notice was also published in a local newspaper '*KARMAKHETRA*'. As per the recruitment notice, the required qualification for the posts of Technical Assistants was MCA/BE Computer degree from a recognized university and it also provided that preference shall be given to the candidates having experience in development on *Oracle***.** The petitioner as also the deceased petitioner having requisite qualification applied for the post of Technical Assistants as they had obtained MCA degree from recognized university and they hold experience in Oracle language.

4. The applications of the petitioner and the deceased petitioner along with other candidates were scrutinized and the lists of selected candidates were published on the website of the High Court at Calcutta for appearing before the interview Board, which was held in the Chamber of the Chairman, Project Monitoring Committee on 23rd June, 2007. The petitioner along with other candidates including the deceased petitioner appeared. On being successful, the deceased petitioner was offered appointment on 1st August, 2007, in the post of Technical Assistant, purely on temporary and contractual basis for a period of six months. Though, the deceased petitioner joined the post, the 2nd rank holder who was offered appointment did not join the post within the scheduled date.

The petitioner being the 3rd rank holder was then, offered appointment vide Memo. No.3766 RG dated 31st August, 2007, purely on temporary and contractual basis for a period of six months at a consolidated remuneration of Rs.8500/- per month. Accepting the above offer, the petitioner joined.

5. Though, initially the contract was for 6 months, the contract was renewed for another 6 months and by a letter dated 14th August, 2008, the same was renewed until further notice.

6. In the year 2009, e-Courts Project recruited System Officers and System Assistants on contractual basis, who were deployed for implementation of Computerization in District Courts and subordinate Courts of West Bengal. These System Officers and System Assistants were posted at different District Courts of West Bengal. These System Officers and System Assistants joined the service between the year 2009 and 2011. Subsequently, vide office order dated 13th October, 2011, the Secretary to the Government of West Bengal, Judicial Department, intimated the Pay & Accounts Officer, Kolkata Pay & Accounts Office-II that pursuant to the proposal of the High Court to the Government for creation of twelve (12) Technical posts on permanent basis for the Centrally funded project of "*Computerization and Networking of City Civil Courts of Kolkata*", in order to facilitate smooth and effective functioning of the courts identified for computerization under the said project, the Governor has been pleased to accord sanction to nine (9) permanent technical posts, out of which three (3) posts are designated as System Administrators and six (6) posts are

designated as Technical Assistants to handle all the jobs of computerization in the three Court Complexes, namely,

(i) City Civil Court and Presidency Small Causes Court, Calcutta.

(ii) Metropolitan Magistrates Court, City Sessions Court and Family Court, Calcutta.

(iii) District and Sessions Judges Court, South 24 Parganas.

7. According to the petitioner, at the initial stage, there was only one single designation of the technical post i.e. *Technical Assistant*, having qualification MCA/BE, under the "Project Monitoring Committee on Computerization and Networking of City Civil Court of Kolkata", High Court at Calcutta, where the petitioner along with the deceased petitioner were working. At the time of sanction of the nine (9) permanent technical posts, the Governor bifurcated the post of *Technical Assistant* by creating two posts, namely, 'System Administrator' and 'Technical Assistant'. Subsequently, by an order dated 5th July, 2012 the then Hon'ble Chief Justice, High Court, at Calcutta was pleased to abolish the "Project Monitoring Committee for Computerization and Networking of City Civil Courts of Kolkata, High Court at Calcutta" and merged the same with the "High Powered Committee for implementation of e-Courts Project in the State of West Bengal". The matter was placed before the High Powered Committee for implementation of e-Courts Project in the State of West Bengal and for retention of Technical Assistants as appointed by the *Project Monitoring Committee on Computerization and Networking of City Civil Court of Kolkata, High Court at Calcutta*, and the High Powered

Committee on principal approved the proposal of retention of the Technical Assistants to perform their work under e-Courts Project. The decision of retention was also approved by the then The Hon'ble The Chief Justice, High Court, Calcutta through a lay note dated 8th August, 2012.

8. The High Court administration in the interregnum, had moved the Government with the proposal for creation of twenty one (21) posts of System Officers and sixty six (66) posts of System Assistants under e-Courts Project for implementation of computerization in District and Subordinate Courts of West Bengal. Accordingly, the Government created the same, under Pay Band 4 with Grade Pay of Rs.4600/- for System Officers, and Pay Band 4 with Grade Pay of Rs.4400/- for System Assistants vide G.O. No. 7272-J/JD/O/3H-30/10 dated 21st December, 2012. As per the National Policy and Action Plan for Implementation of Information and Communication Technology in the Indian Judiciary (in short ICT), prepared by the e-Committee, Supreme Court of India, the technical manpower so created was to be absorbed in the regular cadre of the courts for which the concerned State Governments, in consultation with the High Courts, should make appropriate provisions.

9. According to the petitioner, the pay structure of the System Administrators and Technical Assistants posts were also approved by the State Government in Pay Band 4 with Grade Pay Rs.4600/- with Scale (Rs.9000/- to Rs. 40,500/-) and allowances as admissible under the Calcutta High Court (Appellate Side & Original Side) services (interim Revision of Pay & Allowances) Rules 2009 and in Pay Band 4 with Grade

Pay of Rs.4400 with Scale (Rs.9000 to Rs.40,500/-) in case of System Administrators and Technical Assistants respectively by G.O. No. 1058-J/JD/3H-21/07 dated 6th March, 2013. The petitioner contends that according to the National Policy and Action Plan, the Calcutta High Court has framed "Calcutta High Court (Computer Technical Manpower for District Courts Recruitment) Rules, 2014" (in short, the "2014 Rules") by Memo. No. 4361-G dated 12th November, 2014, for recruitment of Technical persons for computerization of the Judiciary. The said 2014 Rules was duly approved by the Government of West Bengal and was published in the Kolkata Gazette on 27th November, 2014. The Hon'ble The Chief Justice, High Court, Calcutta has also been pleased to absorb the existing 13 (thirteen) "System Officers" and 16 (sixteen) "System Assistants" permanently, who were initially appointed as Technical Manpower and have been working under e-Courts project under the placement Agency in the District and Subordinate Courts of West Bengal, in conformity with the provisions as laid down in Rule 8 of the Rule 2014.

10. Subsequently, by a letter dated 6th June, 2013, the Secretary, Government of West Bengal, Judicial Department, intimated the Registrar General, High Court, Calcutta to combine Recruitment Rules 2014 for the post of System Officer and System Assistant, System Administrator and Technical Assistant, as the three (3) posts of System Administrator and six (6) posts of Technical Assistants have been created which are similar to the posts of System Officer and system Assistant for the project "Computerization and Networking of City Civil Courts of Calcutta". The

authority for implementation of e-Courts Project in the District and Subordinate Court of West Bengal, amended the Recruitment Rules 2014 to absorb the Technical Assistants working under e-Courts Project and also for new recruitment vide Notification No. 3945-G dated 7th December, 2017. Accordingly, the Calcutta High Court (Computer Technical Manpower for District Courts Recruitment) Rules, 2014 was amended and published in the Kolkata Gazette on 5th February, 2018. The above amendment, in Rule 8(b) after sub-rule (1), (1A) was inserted.

11. That by incorporating the above provision in the 2014 Rules by way of amendment, the authority took the steps of absorbing the two petitioners in compliance with the direction as contained in the National Policy and Action Plan for implementation of information and Communication Technology in the Indian Judiciary, framed by the e-Committee, Supreme Court of India for absorbing the technical manpower crated in the regular cadre of the courts.

12. As would appear from the above, at the time of framing of the amended Rule with the insertion of Rule 8(b) after sub-rule (1) and (1A) it has been incorporated as “shall be eligible for pay and allowances and other benefits as admissible to the State Government employees holding equivalent post” instead of “allowances as admissible under the Calcutta High Court (Appellate & Original Side) Services (Interim Revision of Pay & Allowances) Rules 2009” as contended in G.O. No. 1058 dated 6th March, 2013. This, according to the petitioner, is a deviation to the effect that the allowances as admissible to the petitioner has been wrongly provided. It

is also the petitioner's case that the Secretary to the Government of West Bengal by letter dated 14th December, 2018 had informed the Registrar General, High Court, Calcutta that the Governor has been pleased to accord sanction for the absorption of these two Technical Assistants being the deceased petitioner and the petitioner herein in the e-Court Project on permanent basis with effect from 5th February, 2018 in the Pay Band 4 of Rs. 9000/- to Rs.40,500/- plus Grade Pay Rs.4,400/- as per provision contained in the rule 8(b)(1A) of the "Amendments to the Calcutta High Court (Computer Technical Manpower for Districts Courts Recruitment) Rules, 2014" against two (2) of the six (6) posts of Technical Assistants. According to the petitioner, the petitioner possess qualification equivalent to the qualification for the post of System Administrator and is working as a technical person in the project of computerization of the High Court, Calcutta since 2007, he ought to have been absorbed in the post of System Assistants. According to the petitioner, though the provisions 8(b)(1A) as aforesaid specifically provided to take into consideration the criteria with regard to educational qualification for such posts but the authority at the time of making the provision for absorption has not at all, considered that the petitioner was having higher qualification than what is required for the post of Technical Assistant, and as such he ought not be absorbed in the post of Technical Assistant only on the basis of the designation, as on the said absorption he is placed on the same footing with the employees who will be recruited in terms of the Rules 2014, who will have less

qualification than the petitioner and the same would have the effect of demoting the petitioners in service, on absorption.

13. Mr. Dhole, learned advocate appearing for the petitioner, would submit in the amended Rule 2014, the qualification for technical assistants has, however, been lowered to include Government recognized diploma in IT or equivalent after 12th standard, which is a lower qualification and is a degradation of such post. Absorption of the petitioner in the degraded post of Technical Assistant amounts to lowering down the service of the petitioner, which has never been intention of the National Policy makers. At the time of absorption of the petitioner, the initial minimum required qualification has not been taken into account. When the Amended 2014 Rules were framed, the post of Technical Assistants which once, had the minimum qualification of MCA/BE in computer from a recognized university, is now brought down to Government recognized diploma in IT or equivalent after 12th standard. In the facts stated hereinabove, Mr. Dhole, would seek interference from this Court.

14. Mr. Chakraborty, learned advocate appearing for the High Court administration on the other hand, has argued that the Calcutta High Court had framed the Calcutta High Court (Computer Technical Manpower for District Courts Recruitment) Rules 2014 vide Memo. Dated 12th November, 2014 upon considering the view of State. According to him, the Secretary, Government of West Bengal by letter dated 21st June, 2016 communicated the learned Registrar General, that as regards

provision for absorption of two System Administrators, they were recruited on contract basis as Technical Assistants. Now, their absorption to the post of system Administrator has been proposed to be included in the recruitment rules stating that they hold the requisite qualification for the said post. For such proposal, decision of the e-Committee of Supreme Court of India has been cited. However, the absorption as per the decision of the said Committee of the Supreme Court may be made under the project in the same post in which a person was engaged. But here the proposal is for absorption in higher post on the ground that they have requisite qualification for the said post. This was not acceptable. As such the State had expressed its willingness to agree to absorb the two Technical Assistants in the same post i.e. regular post of Technical Assistants provided their engagement were made following due procedure as well as same is covered under the decision of the e-committee of the Supreme Court as cited. The Administrative Department may amend the recruitment rules accordingly subject to vetting by Law Department and approval of Cabinet.

15. Accordingly, it is argued that there is no scope to absorb the petitioner to a post in a higher grade since, originally, the petitioner was appointed as a *Technical Assistant.* In support of his contention reliance has been placed on judgment delivered by the Hon'ble Supreme Court in the case of ***State of Maharashtra v. Purshottam & Ors.,*** reported in **(1996) 9 SCC 266.** Reliance has also been placed on the judgment delivered in the case of ***State of Haryana & Anr. v. Kamal Singh***

Saharwat & Ors., reported in **(1999) 8 SCC 44**. This apart, the respondents have also raised the questions of delay on the part of the petitioner in approaching this Court. According to the respondents, the writ petition has been filed on 16th March, 2022 while the posts of System Assistants were created vide Notification dated 27th November, 2012 under the Calcutta High Court (Computer Technical Manpower for District Court Recruitment) Rules, 2014 and subsequent amendment notification dated 7th December, 2017 and the appointment letter dated 22nd January, 2019. On delay, reliance has been place on the judgment delivered in the case of ***Mrinmoy Maity v. Chhanda Koley & Ors.***, reported in **(2024) 15 SCC 215.**

16. The state is represented and is heard.

17. Having heard the learned advocates appearing for the respective parties, the question that falls for consideration is whether the petitioner appointed as a *Technical Assistant* by the Project Monitoring Committee, by way of a selection process which required the petitioner to obtain requisite qualification of MCA/BE computer degree from a recognised university which incidentally was the requisite minimum qualification of Technical Assistants, and on his absorption in the post of Technical Assistant on the basis of Amended Recruitment Rule 2014 which once, had the minimum qualification of MCA/BE in computer from recognised university having been brought down to Government Recognised Diploma in IT or equivalent after 12th standard, could be said to have been degraded on such regularisation. In this context, I find that the petitioner

has placed before this Court the National Policy framed by the Hon'ble Supreme Court of India which recommended absorption of technical manpower created in the regular cadre of the Court. According to the petitioner, the same does not mention that the absorption should be made on the basis of nomenclature of the posts without considering the required minimum qualification at the time of initial appointment in the post. According to the petitioner, the National Policy does not justify the placing of the petitioner in a post of lower qualification, only on the basis of nomenclature. The petitioner's case further proceeds on the premise that at the time of creation of the post of System Administrators and Technical Assistants, the required qualification for the posts were not fixed. Qualification has been subsequently determined by amendment of the Recruitment 2014 Rules. As such, it was for the concerned authorities to take an informed decision for absorption the petitioner in any post according to his qualification.

18. On the issue of qualification of the petitioner, I find that the petitioner has passed MCA from Biju Pattanaik Technical University. It is also a matter of record that on 2nd March, 2007, Registrar General-in-Charge and Member Project Monitoring Committee, High Court Calcutta published a recruitment notice for two posts of technical assistants on contractual basis. As noted above the appointment of the petitioner was as a *technical assistant.* Later, from time to time, the Project Monitoring Committee was pleased to extend the service of the petitioner as technical assistant, further extension was again granted with effect from 5th

September, 2008 on the same terms and conditions. To retain chronology, it is reiterated that Governor had accorded sanction for creating of nine (9) permanent technical posts out of which three (3) posts were of System Administrators and six (6) posts were of Technical Assistants, for development of the computerisation and network project of City Civil Courts of Kolkata. Following the above, the Hon'ble Chief Justice on 5th July, 2012 was pleased to abolish the Project Monitoring Committee and merged the same with the High Powered Committee. The High Powered Committee on 8th August, 2012 accepted the proposal for retention of the Technical Assistants which was approved by the Hon'ble The Chief Justice on 8th August, 2012. Subsequently, on 21st December, 2012 Government created twenty (21) posts of System Officers and 66 posts of System Assistants under Pay Band 4 with Grade Pay of Rs. 4,600/- for System Officers and Grade Pay of Rs. 4,400/- for System Assistants. The pay structure of the System Administrators and Technical Assistants were also approved by the State Government on 6th March, 2013 in Pay Band 4 with Grade Pay of Rs. 4,600/- and Pay Band 4 with Grade Pay of Rs. 4,400/- respectively. It is also a matter of record that the Hon'ble High Court had framed the Calcutta High Court (Computer Technical Manpower for District Court Recruitment) Rules, 2014 vide Memo. Dated 12th November, 2014.

19. Records of the proceedings reveal that the Hon'ble members of the High Powered Committee, constituted for implementation of e-Courts Project and Computerisation of the Districts and Subordinate Courts in

the State of West Bengal, held a meeting on 9th June, 2015 wherein under Agenda No.2 the proposal for regularisation of services/ absorption of existing technical manpower working in e-Courts Project for the District and subordinate Courts in West Bengal, was considered while under Agenda no.3 the amendment of 'Calcutta High Court (Computer, Technical Manpower for District Courts Recruitment) Rules 2014, in order to absorb existing two (2) Technical Assistants appointed under Project Monitoring Committee for Computerisation and Networking of City Civil Courts, Calcutta and recruitment of renaming technical posts generated under PMC project was also discussed among other agenda. Records reveal after due deliberation in respect of agenda number two (2), it was resolved the Central Project Coordinator through the Learned Registrar General, will invite Principal Finance Secretary and Judicial Secretary, Government of West Bengal for discussion on queries / clarifications sought for by the Government of West Bengal vide letter dated 29th May 2015. In so far as Agenda No.3, after due consideration, and on being apprised that the minimum educational qualification required for the post of technical manpower under the Computerization and Networking of the City Civil Courts of Calcutta was B.E/B.Tech/MCA or equivalent and at the relevant time it was single tire post in the name of Technical Assistants and the Government having sanctioned three (3) posts of System Administrator and six (6) posts of Technical Assistants for the Computerisation and Networking of the City Civil Courts at Calcutta under the two tire system namely System Administrators and Technical

Assistants, both in Pay Band 4 (9,000 to 40,500) with grade pay of Rupees 4600 and Rupees 4400 respectively, it was resolved that that the two existing Technical Manpower, who were appointed as Technical Assistants in the single tire scheme, having minimum educational qualification admissible for the post of System Administrator in the two tier scheme (BE/ B.Tech/ MCA) may be absorbed in the capacity of System Administrators in the two tire scheme. The renaming of the post of System Administrators and Technical Assistants may be provisioned to be filled up by direct recruitment, by way of amendment of the 'Calcutta High Court (Computer Technical Manpower for District Court Recruitment) Rules 2014. The draft copy of the proposed amendment in the Calcutta High Court (Computer Technical Manpower for the District Courts Recruitment) Rules, 2014 was also approved by the Hon'ble members of the committee in the said meeting.

20. Incidentally, by letter dated 21st June, 2016, the Secretary to the Government of West Bengal had forwarded their observations as regards the proposed amendment of the recruitment rules. The Secretary, Government of West Bengal by letter dated 21st June, 2016 communicated to the Registrar General about the observations, which are noted hereinabove

> **"***Educational qualification for the post of Technical assistant and System assistant has been mentioned as Government recognised Diploma in IT or equivalent after 10" standard. The post belongs to Group 'A'. So the qualification as proposed does not fit for the said post. The same need be graduation in the concerned stream. The*

Administrative Department may modify accordingly. In the alternative such diploma may be after 12th Standard. Otherwise the scale of pay is to be lowered to that of Group 'C' post with the approval of Finance Department.

As regards provision for absorption of two System Administrators, it is seen that they were recruited on contract basis as Technical Assistant. Now, their absorption to the post of system Administrator has been posted to be included in the recruitment rules stating that they hold the requisite qualification for the said post. For such proposal decision of the e-Committee of Supreme Court of India has been cited. It may be mentioned that absorption as per the decision of the said Committee of the Supreme Court may be made under the project in the same post in which a person was engaged. But here the proposal is for absorption in higher post on the ground that they have requisite qualification for the said post. This may not be acceptable.

*Accordingly we may agree to absorb the two Technical Assistant in the same post i.e. regular post of Technical Assistant provided their engagement were made following due procedure as well as same is covered under the decision of the e-committee of the Supreme Court as cited. The Administrative Department may amend the recruitment rules accordingly subject to vetting by Law Department and approval of Cabinet.***"**

21. As would appear from the above, the Government held out that it may agree to absorb the two Technical Assistants in the same posts i.e. the post of Regular Technical Assistants provided their engagement were made following the procedure as well as the same is covered under the decision of the e-Court of the Supreme Court as cited.

22. Records reveal that in furtherance with the above, the Hon'ble members of the committee after having considered the above response resolved that the proposal of the Government mentioned in the said letter

shall be accepted and accordingly, necessary rectification was directed to be made in the proposed amendment inserting the qualification of System Assistants as Higher Secondary Examination or equivalent and regularising the existing technical assistants in the post of Technical Assistant and in case of System Assistants having qualification less then Class 12 and who have been working in the post of System Assistants, were to be granted three years' time to obtain a degree/diploma of Class 12 under 10+2+3 pattern. The Hon'ble Members of the Committee further unanimously resolved that existing two technical assistants, who are working on contractual basis shall be absorbed/ regularising in the cadre of System Assistant instead of System Administrative cadre. The Hon'ble Committee also unanimously resolved that necessary amendment to be inserted in the proposed amendment and communicated to the Government of West Bengal for further cause of action. The draft amendment of the Calcutta High Court (Computer Technical Manpower for District Courts Recruitment) Rules, 2014 was thus, reapproved with the variation. In so far as the question of amendment to the existing 2014 rules of the Calcutta High Court (Computer Technical Manpower for District Courts Recruitment) Rules 2014 is concerned, since the concerned employees holding the post of System Assistants, System Administrators and Technical Assistants have been appointed/regularised in terms of the provisions of Calcutta High Court (Computer Technical Manpower for District Courts Recruitment) Rules, 2014, and are rendering services in the District Courts, they are

employees of the District Courts i.e. the Subordinate Courts of the States. So, like other employees of the District Courts and Subordinate Courts, they should be guided by the West Bengal Service Rules instead of Calcutta High Court Service Rules, 1960. Such fact would corroborate from the letter issued by the Joint Secretary to the Government of West Bengal dated 9th January, 2020. This approval is signed and dated 12th July 2016.

23. The deliberations on the aforesaid issue are however, not noted in the above minutes/ lay note and there is no clarity why the Governments proposal was accepted. In this context, from the materials on record, I find that initially, minimum educational qualification required for the post of technical manpower under the Computerization and Networking of the City Civil Courts of Calcutta was B.E/B.Tech/MCA or equivalent and there was only one post of Technical Assistant with requisite minimum educational qualification of B.E/ B.Tech/ MCA or equivalent. This particular post was later bifurcated into two posts i.e. one for System Administrators and other of Technical Assistants. It is the petitioner's contention that the post of Technical Assistants has been redesignated as System Administrator, by creating a new post of Technical Assistants with lower qualification. Consequently, absorption of the petitioner in the post of System Administrator will amount to absorption in the higher post as has been tried to be portrayed by the Government is a misnomer. I find that though, the respondents had tried to canvas that the post of System Administrator is a promotional post, the same is unacceptable, inasmuch

as the qualification required for the post of System Administrator is MCA/BE, while the qualification for the post of Technical Assistants as per the amended recruitment Rules of 2014 is much lower. As such the post of Technical Assistants cannot be a feeder post for the post of System Administrator.

24. It is clear that originally, the petitioner along with the deceased petitioner though appointed in the post of Technical Assistants in single tire system and were recruited on the basis of a minimum qualification which qualification does not commensurate with the qualification of the bifurcated posts of Technical Assistants in the two tire system, rather the same only commensurate with the qualification of the post of System Administrator under the two tire system, the above view has been elaborately discussed and accepted by the Hon'ble members of the committee, in the meeting held on 9th June 2015. Though, the reasoning provided by the Government to deny the petitioner's absorption in the post of system Administrator is based the presumption that the post of System Administrator is a higher post, and is different from the post of Technical Assistants, and the absorption is only permissible in the same post, however, such reasoning appears to have overlooked the fact that by reasons of downward revision of the educational qualification for the post of Technical Assistants, the petitioner was only eligible to be absorbed in a redesignated technical post of System Administrator, which now is equivalent to the original technical post of Technical Assistants, having equivalent requirement of educational qualification, for

appointment to such posts. In this context, it would also be relevant to consider that the National Policy and Action Plan for Implementation of Information and Communication Technology in the Indian Judiciary specifically provided that the technical manpower so created will be absorbed in regular cadre of the courts for which the concerned state Governments, in consultation with the High Courts should make appropriate provision. Admittedly, there was no previous technical cadre for computers as such while framing, the new recruitment rules for this technical cadre, and while agreeing to absorb the original two petitioners in the Technical cadre the State ought to have been conscious in selecting the post for absorption of the original two petitioners, in the two tire system, having regard to the qualification of the original two petitioners. The same has not been done. The executive observation in so far as expressing that the criteria for absorption as per the decision of the of the Supreme Court which required absorption to be made in the same post in which a person was engaged, and that the willingness to absorb the petitioner in the redesignated post of Technical Assistants as communicated by the Joint Secretary by letter dated 21st June 2016, by treating the original post of Technical Assistants as a regular posts, does not have any rational basis, the same is not only arbitrary but the same seeks to interfere with employment opportunity of the persons having lower qualification, in the redesignated technical post of Technical Assistants and is thus, inequitable.

25. The judgements relied on by the learned advocate for the respondent no.1 in the case of ***Purshottam & Ors.*** (supra) and the case of ***State of Haryana & Anr.,*** (supra) does not assist the respondents. It may be noted that the case of ***Purshottam & Ors.*** *(supra)* considers the case of employment in work charged establishment, which means an establishment of which the expenses, including the wages and allowances of the staff are chargeable to the work. The work charge establishment employees are engaged on a temporary basis and their appointments are made for execution of a particular work, and the same comes to an end on the completion of the specific work for the sole purpose for which the appointment is made. In the said case, the Government by a resolution decided that junior engineers having work charged service to his credit should be assigned a *deemed* date which should be one day prior to the date on which his immediate junior on work charge establishment or from open market was appointed on a regular temporary establishment in the same circle. This *deemed* date was the date of absorption and the seniority list for promotion to the post of Sub Divisional Engineer was directed to be prepared, taking into account the deemed date of entry. The decision was taken in absence of any provision in the recruitment rules. This judgement does not assist the respondents at all. In the case of ***State of Haryana & Anr.*** (supra) the issue that fell for consideration was whether the teachers could claim higher pay on the scales of pay applicable to lecturers automatically on their acquiring post graduate qualification without being appointed as lecturers in terms of the circular dated 23rd

July 1957, issued by the erstwhile State of Punjab, and after Haryana Government was formed, an order was issued directing for the revision of pay scale of teachers working in government schools in 1968. The petitioners insisted that they were entitled to higher scales of pay applicable to lecturers on the basis of their qualifications as they had become post graduates. In the said case, the Hon'ble Supreme Court by noting the letter dated 9th March 1990 issued by the financial commissioner and secretary to the government of Haryana, whereby it was clarified that the teachers in Educational Department in the State of Haryana were not entitled to be placed in higher scales of Pay in terms of para 3 of the Punjab Government letter dated 23rd July 1957 or any subsequent notification issued by the Haryana Government referred to therein which had become inoperative, held the teachers acquiring postgraduate qualifications or qualifications before 9th March 1990 would be entitled to the benefit of para 2 of the Punjab Government letter dated 23rd July 1957. The judgement also records that there is no judgement of the Supreme Court holding that the teachers acquiring postgraduate qualifications or qualifications prescribe for the post of lecturers would automatically be entitled to scale of pay applicable to lecturers on acquiring such qualification without being appointed as lecturers in accordance with the rules. The above judgement does not assist the respondents at all as the same deals with pay linked to qualification, and not qualification linked to the Posts. This apart, although, the respondent no.1 has by relying on the judgement delivered in the case of ***Mrinmoy***

Maity (supra) submitted that since the petitioner has approached the Court, belatedly, the petition should be dismissed on account of delay, I, however, find that this is not a case where the petitioner had been sleeping over his rights. The petitioner was initially employed on contractual basis and had worked in the only technical post then created for about a decade before being absorbed. There was no existing technical cadre, the same was created in terms of the National Policy and Action Plan for Implementation of Information and Communication Technology in the Indian Judiciary. The petitioner was absorbed having regard to the directives contained in the aforesaid national policy which required that the technical manpower so created, was to be observed in the regular cadre of the Courts, for which the concerned State Governments, in consultation with the High Courts, should make appropriate provision. This is not a case of the petitioner sleeping over his rights as in the case of ***Mrinmoy Maity*** (supra). It is well settled that delay cannot be permitted to defeat the legitimate right of an individual especially when the action of the state in conditionally agreeing for absorption of the existing technical manpower in a redesignated post of Technical Assistants, which does not commensurate with the qualification of the posts so created, appears to be arbitrary and inequitable.

26. Accordingly, the petition is partly allowed by directing the state to suitably amend and modify the provisions of Rule 8(b)(1A), the second schedule part C serial number 3, method of recruitment of System Administrator and the second schedule part D serial number 3, method

of recruitment of Technical Assistants of the Calcutta High Court (Computer Technical Manpower for District Courts Recruitment) Rules, 2014, and to suitably make provisions for absorption of the petitioner in the post of System Administrator in accordance with Article 229(2) of the Constitution of India, within three months from the date of communication of this order. The petitioner shall be entitled to notional benefits from the date of filing of the petition in terms of the interim order dated 4th January 2024, passed by the coordinate Bench, on regularisation in the post of System Administrator though, actual benefits would be made available from the date of absorption of the petitioner in the new post in terms of the above order.

27. The disclosure made by the High Court administration in the form of copies of the Official records comprising of 60 pages, be retained in a sealed cover, with the file.

28. Urgent photostat certified copy of this order, if applied for, be made available to the parties, on priority basis, upon compliance of all formalities.

(RAJA BASU CHOWDHURY, J.)