

# **In The High Court At Calcutta**

## **CIRCUIT BENCH AT JALPAIGURI**

### **Constitutional Writ Jurisdiction**

#### **Appellate Side**

**Present:**

**The Hon'ble Justice Shampa Dutt (Paul)**

**WPA 500 of 2025**

**Rupak Bhowal & Anr.**

**Vs.**

**The High Court Administration & Ors.**

**For the Petitioners** : Mr. Dibyendu Chatterjee (V/C)  
Ms. Reshmi Ghosh (V/C)  
Mr. Deborshi Dhar,  
Ms. Taniya Bhowmik,  
Ms. P. Mukherjee.

**For the Respondent No. 1** : Mr. Bikramaditya Ghosh.

**For the Respondent Nos. 2 & 4** : Mr. Hirak Barman,  
Mr. Bikash Singha.

**For the Respondent No. 3** : Mr. Momenur Rahman,  
Mr. Pradip Sarkar.

**Judgment reserved on** : 27.02.2026

**Judgment delivered on** : 05.03.2026

**SHAMPA DUTT (PAUL), J. :**

1. Statements as called for is placed by the learned counsels representing the learned District Judge, Jalpaiguri and the learned District Judge, Alipurduar.
2. The writ application has been preferred praying for cancellation of the Office Order No. 99(M) dated 28th April, 2023, Order No. 22 dated 3rd June, 2023 and Office Order No. 35/G dated 6th January, 2025 passed by the learned District Judge, Jalpaiguri.
3. The petitioner has further prayed for direction upon the respondent no. 2 to act in terms of the order No. 320/G dated 6th February, 2023 and transfer the petitioners with immediate effect to the Alipurduar Judgeship and for direction upon the learned District Judge, Alipurduar to place the names of the present petitioners in the Alipurduar gradation list.
4. On hearing the learned counsels for the petitioners and on perusal of the materials on record, it appears that the petitioners herein were appointed as Stenographers (Group-B) in the office of the District Judge, Jalpaiguri on 18<sup>th</sup> March, 2019.
5. On the bifurcation of the judiciary of Alipurduar from Jalpaiguri District Session Division, the petitioners as per order no. 320/G dated 9<sup>th</sup> February, 2023 passed by the learned

District Judge Jalpaiguri, which called for option(s) from all cadres of staff of the Judgeship of Jalpaiguri for transfer/deployment to the Judgeship of Alipurduar from Jalpaiguri or vice versa, duly exercised their options for Alipurduar from Jalpaiguri.

6. The petitioners exercised their option being residents of Alipurduar District by way of an application dated 14<sup>th</sup> February, 2023 and 10<sup>th</sup> February, 2023 respectively.
7. Vide an Office Order No. 99(M) dated 28<sup>th</sup> April, 2023, the learned District Judge, Jalpaiguri decided to keep the optional transfer provision in abeyance, on stating that the purpose was to **get a clear picture of the actual vacancy** position in Jalpaiguri Judiciary and Alipurduar Judiciary.
8. The learned District Judge being the respondent no. 2 herein, then issued a memo no. 1207/G dated 18<sup>th</sup> May 2023, enclosing a draft copy of the Gradation List of English Stenographers of the Judgeship of Jalpaiguri (Sadar) and the English Stenographers were asked to record their 'no objection'/ 'objection' alongside the name.
9. The petitioners then claimed their seniority in the gradation list of Alipurduar Judgeship as they had already opted for transfer to Alipurduar Judgeship.

10. The petitioners thus submit that the order of keeping the matter in abeyance is not in accordance with law and have thus prayed for setting aside of the said order of abeyance dated 28<sup>th</sup> April, 2023.
11. It is further stated by the petitioners that vide the impugned order dated 3<sup>rd</sup> June, 2023, some of the other staffs, of other categories, were given the benefit of transfer, in terms of office order dated 9<sup>th</sup> February, 2023.
12. The learned District Judge then issued another **order being no. No. 147-A(M) dated 9th June, 2023** once again referring to the bifurcation Notification dated 24th April, 2023 and **also the Gradation List prepared on 19th May, 2023 and noted that the petitioners had opted for their transfer to the Alipurduar Judgeship.**
13. It is further stated that **the District Judge, Jalpaiguri in the said order then requested the District Judge, Alipurduar to place the names of the petitioners herein in the draft gradation list of the English Stenographers of Alipurduar Judgeship, according to their seniority maintained in the parent judgeship, until they join the Judgeship of Alipurduar on resumption of their optional transfer process.** Accordingly, the respondent No. 2 directed that there is **no bar** in publishing the Final Gradation List of Alipurduar

Judgeship in respect of the petitioners herein (English Stenographers) posted in Jalpaiguri Judgeship.

14. Thus it appears that the grievance relating to their seniority position in the gradation list of Alipurduar had been taken care of.
15. Documents annexed to the writ application, show that the petitioners were appointed vide an order dated 18.02.2019, by the learned District Judge Jalpaiguri. Option was called for by the learned District Judge Jalpaiguri vide memo 320/G Jalpaiguri the 9<sup>th</sup> day of February, 2023, inviting option from all cadres of staff of the Judgeship for transfer and deployment to the Judgeship of Alipurduar from Jalpaiguri and vice versa subject to bifurcation of the judiciary of Jalpaiguri District.
16. The petitioners admittedly applied for the same. The impugned order dated 28.04.2022 passed by the District Judge Jalpaiguri notes that all options had been obtained from the staff of the offices.
17. By the said order, the learned District Judge also kept the matter of optional transfer in abeyance, till a reply was received from the Government. The relevant portion of the said order is as follows:-

*“.....Now, it has been observed by the undersigned that to get a **clear picture** of the actual vacancy position in both the judiciaries as aforesaid, for the purpose of fresh recruitment for either of the judgeships*

*in question, if so directed by the upper forum, it would be prudent that the matter of aforesaid optional transfer **be kept in abeyance till the fresh recruitment process is initiated by this end, which is stalled at present, pending receipt of any reply from the Government against the clarification** sought for by this end vide this office earlier letter no. 101/N, dated 01.07.2022 on some clauses of the Gazette Notification bearing no 91-JL, dated 06.07.2021 regarding The West Bengal District Court (Constitution of Service, Recruitment, Appointment, probation and Discipline of Employees) Rules, 2015. And-also for the Writ Petition filed by the West Bengal Courts Employees Association & Another bearing no. WPA 9918 of 2019 with IA No. CAN 1 of 2020 (CAN 4183 of 2020) with CAN 2 of 2020 with CAN 3 of 2020 against the State of West Bengal & Others involving the said Rules i.e. Rule 2015 which is still pending before the Hon'ble Court.*

*Hence, the optional transfer in question is hereby kept in abeyance till any **suitable reply from the Government** on the matter stated above and any way forward comes out of the aforesaid writ petition in the form of a verdict and consequently fresh recruitment for both Jalpaiguri Judgeship and Alipurduar Sessions Division is initiated under directive of the upper forum Inform all concerned.*

**Sd/-**

**DISTRICT JUDGE, JALPAIGURI"**

- 18.** It appears from the said order that a clarification from the Government's end was required and also a connected writ application being no. WPA 9918 of 2019 was pending.
- 19.** Vide another order dated 03.06.2023 being no. 23, the learned District Judge Jalpaiguri permitted certain staffs to be released from the Judgeship of Jalpaiguri Sadar on 09.06.2023 for

joining the Judgeship of Alipurduar in the forenoon of 12.06.2023 after the bifurcation of Jalpaiguri Judgeship into Jalpaiguri and Alipurduar, **without waiting for either clarification from government or considering the pendency of the writ application.**

20. The learned District Judge in the said order dated 09.06.2023 considered the prayer of the petitioners for their seniority to be maintained in the gradation list and passed the following order:-

*“.....In the wake of bifurcation of District Judgeship into two Judgeships viz. Jalpaiguri and Alipurduar and subsequent declaration by the Government, vide Judicial Department, Govt. of West Bengal Notification No. 81/JD/X/16M-29/14 dated 24.04.2023 of the District of Alipurduar as Sessions Division having its original seat at Alipurduar, Draft Gradation List of all category of staff including the English Stenographers posted in the Jalpaiguri Judgeship was prepared on 19.05.2023 to get a clear picture of the actual vacancy position in the Judgeship of Jalpaiguri for the purpose of fresh recruitment, and on circulation of the Draft Gradation List 2023 of the English Stenographers posted in the Jalpaiguri Judgeship, two of the Grade III English Stenographers viz. 1) Sri Rupak Bhowal, attached to the Court of the Ld. Additional Dist. & Sessions Judge, 2 Court, Jalpaiguri, and 2) Sri Pratim Patranbish, posted in the Court of Railway Magistrate at N.J.P and deputed to act as Stenographer in the Court of the Ld. Addl. Dist & Sess. Judge at Malbazar, have made endorsement to the effect that they have already opted to get transferred to Alipurduar Judgeship and subsequently both the above named English Stenographers also submitted their applications dated 31.05.2023 & 01.06.2023 respectively to that effect.*

*Alter carefully going through the applications as submitted by the applicants as well as their endorsements on the Draft Gradation List-2023, it appears that both the incumbents have prayed before the undersigned for getting them transferred to Alipurduar Judgeship, in view of their options/applications, so that they may not lose their seniority.*

*Fact remains that in terms of the Order No.22/N dated 03.06.2023 of the undersigned, the earlier Order No.99(M), dated 28.04.2023 of this office has been **partially recalled** for the purpose of consideration of the optional transfer in respect of the Group 'D' & Process Serving (Seal Bailiff) Staff of newly delimited Judgeship of Jalpaiguri, while maintaining status quo with regard to the matter of optional transfer in respect of English Stenographers for the time being.*

*Under the circumstances, after carefully going through the matter and upon consideration of the applications submitted by both the above named English Stenographers and their endorsement on the Draft Gradation List 2023 of the English Stenographers posted in the Jalpaiguri Judgeship, **the District Judge, Alipurduar is requested to place their names in the Draft Gradation List of the English Stenographers of Alipurduar Judgeship according to their seniority maintained in the parent Judgeship i.e. undivided Judgeship of Jalpaiguri until they join the Judgeship of Alipurduar on resumption of their optional transfer process.***

*Accordingly there remains no bar in publishing the final Gradation List in respect of English Stenographers posted in Jalpaiguri Judgeship.*

**Sd/-  
District Judge, Jalpaiguri"**

**21. Thus, vide the impugned order the learned District Judge protected the seniority of the petitioners herein in the respective gradation list.**

22. Finally, the District Judge, Jalpaiguri vide order no. 35/G dated 6<sup>th</sup> January, 2025 informed the learned District Judge, Alipurduar as follows:-

*“.....that in view of this office Order No. 99 (M) dated 28.04.2023, passed by my predecessor to the office, the matter of releasing two English Stenographers of this Judgeship namely 1) Shri Rupak Bhowal & 2) Shri Pratim Patranabish, who have exercised their option to get themselves transferred from the Judgeship of Jalpaiguri to the newly created Judgeship of Alipurduar pursuant to the bifurcation of Jalpaiguri Judgeship, **cannot be considered at this stage.....”***

23. Hence the writ application filed by the petitioners.

24. Affidavit-in-opposition has been filed by the respondent no. 1, being the High Court Administration.

25. In the affidavit-in-opposition, the specific case of the respondent no. 1, is as follows:-

*“..... that subsequently the learned District Judge, Jalpaiguri in terms of an office order No. 22/M dated 3rd June, 2023 allowed transfer of Group-D and Process Serving (Seal Bailiff) staff from the Judgeship of Jalpaiguri to the newly created Judgeship of Alipurduar by **partially recalling/modifying the earlier office order dated 28th April, 2023**. Pertinently, the question of optional transfer of stenographers was kept aside for the time being since in view of the options preferred by the stenographers, it would have been a case of single way transfer, i.e., from Jalpaiguri to Alipurduar only. **In the context of serious paucity of stenographers under Jalpaiguri Judgeship, the question of optional transfer of stenographers was still kept in abeyance.** It appears from the*

*notification dated 3<sup>rd</sup> June, 2023 that inconvenience caused to a Judgeship by reason of transfer of stenographers was given weighty consideration since the same is a relevant criterion while considering intra-district transfer of employees of subordinate Courts in terms of the scheme framed by the Hon'ble High Court at Calcutta.....”*

- 26.** It is further stated that **from the office report** submitted by the District Judge, Jalpaiguri it was noted that :-

*“.....that since the stenographers are required to discharge a specific skilled and technical job, they cannot be replaced by other cadres of staff and since there existed acute paucity of English Stenographers under the Jalpaiguri Judgeship, release of the petitioners herein would have impacted the day-to-day discharge of judicial functions under the Jalpaiguri Judgeship. **In this regard, it shall be pertinent to mention that in order to address such paucity of manpower, particularly with regard to the stenographers, by a communication dated 20th December, 2024, being office letter No. 2709/G, sanction has been sought from the State Government for recruiting required staff under all cadres for which requirement had arose in view of bifurcation of Jalpaiguri Judgeship,** In response to such communication, by a letter dated 10th January, 2025 being letter No. 07-JD/X, the State Government has sought further information regarding **creation of posts in different cadres.** Such information appears to have been already provided to the State Government by the Jalpaiguri Judgeship and such issue is further pending before the State Government.....”*

- 27. Finally,** the respondent no. 1 has stated that upon going through the relevant report submitted by the Jalpaiguri Judgeship in this regard, it appears that since the matter of **sanction of posts for all categories of staff** is presently under

consideration by the State Government and **the recruitment process of Jalpaiguri Judgeship is presently stalled due to want of actual sanctioned strength and if the petitioners herein are directed to be released in terms of their prayer, the Jalpaiguri Judgeship shall suffer serious inconvenience, which shall directly and adversely affect the discharge of judicial functions by the concerned judicial officers in the said Judgeship.**

28. From the lists of English Stenographers called for by this Court, it appears that as on 26.02.2026, against a **sanctioned strength of 15, there are 14 Stenographers posted at Jalpaiguri (only 1 vacancy) which includes the two petitioners** herein, who have opted for transfer to Alipurduar.
29. It appears from the report submitted by the learned counsel representing the learned District Judge, Alipurduar, that the working strength of Stenographers at **Alipurduar District Court is 11 and working strength is 8 with 3 vacancies.**
30. As such in case the petitioners herein are permitted to join at Alipurduar, the vacancy at District Jalpaiguri shall be 3 against the total sanctioned strength of 15.
31. In case of transfer of the two petitioners to District Alipurduar, the working strength shall be 10 and vacancy 1.

- 32. Taking all this into consideration, the stand of the respondent no. 1, that on the basis of the report, submitted by the respondent no. 2, recruitment has been stalled for want of sanction** for recruiting required staff under all cadres, is prima facie **not substantiated** for the reasons, that for the vacancies which exist and the vacancies which shall arise, if the petitioners are permitted to join Alipurduar in exercise of their option, when all such vacancies are admittedly against sanctioned posts, there is absolutely no impediment to initiate and complete the process of recruitment of the staff, as no further sanction is required from the government in respect of already sanctioned posts.
- 33.** The excuses made by the respondent no. 2, appears to be weak and there appears to be serious delay/laches in initiating **timely process for recruitment**, by giving the reason that the matter is pending before State Government for sanction of required staff, which appears to be vacancies in respect of sanctioned posts. This prima facie appears to be an excuse to avoid conducting timely recruitment to be done, in due course diligently.
- 34.** The said stand of the respondent 1 and 2 again does not have any force, in view of the fact that admittedly some of the staff under other categories have been permitted to join Alipurduar

on exercising their option **under the same order**, which also appears to be one way transfers and the same was done by **partially modifying** the order, even though, **when the reason for “kept in abeyance” in the initial order was the same for all.**

**35.** As such the contention of the respondent no. 1, that sanction has been sought for from the State Government for recruiting required staff under all cadres, which has arisen in view of bifurcation of Jalpaiguri Judgeship **also has no merit.**

**36.** Thus, the order no. 99(M) dated 28.04.2023 keeping the matter of optional transfer in abeyance which relates to sanctioned posts is hereby **set aside.**

**37.** Accordingly, the District Judge Jalpaiguri, the respondent no. 2 herein is directed to release the petitioners herein, within 10 days from the date of this order, permitting them to join at District Alipurduar in exercise of their options, with a further direction to the respective District Judges to initiate the process for timely recruitment in respect of the sanctioned strength of staff, which has fallen vacant, pursuant to such option of transfer by the staff of all categories at the earliest.

**38. Writ application stands disposed of.**

**39.** All connected application, if any, stands disposed of.

**40.** Interim order, if any, stands vacated.

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

**[Shampa Dutt (Paul), J.]**