

CHAPTER II

Reservation in direct recruitment and promotion

***A. Modalities to be maintained**

2. A(a)

**GOVERNMENT OF WEST BENGAL
SCHEDULED CASTES & TRIBES WELFARE DEPARTMENT
Writers Buildings, Calcutta--70001**

No. 314(51)-TW/EC

Calcutta, the 20th June, 1989

To: The.....
of this Government

Subject: Recording of Scheduled Castes/Scheduled Tribes status of employees belonging to such category in the Gradation List.

In accordance with the provision of section 5 of the West Bengal Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1976 employees belonging to Scheduled Castes or Scheduled Tribes are entitled to the benefit of reservation of vacancies in case of promotion in certain services and posts, subject to their fulfilling some norms and eligibility conditions as provided under the rules.

Further, an employee who claims to be a member of Scheduled Caste or Scheduled Tribe shall support his / her Scheduled Caste or Scheduled Tribe Status, as the case may be, by a certificate in the prescribed form from a competent authority.

On the other hand, it is also necessary that the appointing authorities compulsorily records the Scheduled Caste/Scheduled Tribe status of the employees of such category in the gradation list or seniority list, whatever may it be called, on the basis of Scheduled Caste/Scheduled Tribe certificates submitted by such employees before them after necessary scrutiny and verification as to whether the certificate is in the prescribed form and whether it has been granted by a competent authority. Before deciding any case of promotion, appointing authorities should ensure that scheduled Caste/Scheduled Tribe status of the employees has been properly recorded in the gradation list or seniority list in all fit cases without any single exception. Unless this is done, there remains sometimes a chance of genuine Scheduled Caste/Scheduled Tribe employees being unjustly left out of the purview of consideration for promotion against a vacancy or vacancies reserved for Scheduled Caste/Scheduled Tribes.

That department is requested to instruct all the appointing authorities under the administrative control of that department accordingly. Similar instructions may also kindly be given by that department to all the appointing authorities in all offices

* In the orders where the name of the department is not mentioned in the heading it would mean, unless otherwise specified, "Scheduled Castes and Tribes Welfare Department" or "Backward Classes Welfare Department" as the case may be.

subordinate to that department and also to all Undertakings/Statutory Authorities/Local Bodies/Educational institutions etc. under the administrative control of that department, whichever come within the operative area of the State Act on reservation for Scheduled Castes/Scheduled Tribes in employment

Sd/- **A. K. Maity**
Deputy Secretary

2 AD

176-TW/EC

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Calcutta, the 17th April, 1990.

MEMORANDUM

Subject : Filling up of vacancies reserved for SC/ST by promotion with retrospective effect—Determination of eligibility of SC/ST incumbents for the purpose of—procedure for.

It has been observed from references made to this Department by some appointing authorities that there is a confusion in determining eligibility of candidates in the matter of filling up of vacancies by promotion with retrospective effect vis-à-vis observance of the provision of reservation of vacancies for Scheduled Castes and Scheduled Tribes in such cases of promotion. In order to remove such confusion, it is hereby clarified that in deciding cases of promotion with retrospective effect, date of consideration shall be the factor and not the date of availability of vacancy. As for example, let it be supposed that it has been decided to fill up 8 (eight) vacancies in the post of U.D. Clerk by promotion from amongst eligible employees in the lower feeder posts with retrospective effect from 01.04.1981. Let it also be supposed that the said 8 (eight) vacancies occupy their respective positions among the 1st to the 8th points of the 20-point roster prescribed under the West Bengal Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1976. According to roster, 3rd vacancy is to be treated as reserved for Scheduled Castes and 8th vacancy is reserved for Scheduled Tribes and 5×8=40 employees in the lower feeder posts of L.D.C. occupying 1st to 40th position in the gradation list shall come within the normal zone of consideration for promotion. Let it be supposed that 'A' is a Scheduled Caste candidate and 'B' is a Scheduled Tribe candidate and placed at Sl. No. 22 and Sl. No. 40 respectively in the gradation list of lower feeder posts of L.D.C. Now let it be supposed that 'A' and 'B' were confirmed in the lower feeder posts of L.D.C. with effect from 04.06.1984 and 06.08.1985 respectively. In case the matter of filling up of those 8 (eight) vacancies was taken up for consideration by the appointing authority concerned on a date prior to 04.06.1984, both 'a' and 'B' were not eligible to be considered for promotion as they were not at all confirmed in the lower feeder post at that time and the vacancies could be filled up by general candidates. But, in that case, the provision of carrying forward of reserved vacancies as contained in this Department's Notification No. 48-TW/EC, dated 10.03.1980 should be observed.

In case the proposal for promotion was taken up for consideration after 04.06.1984 but before 06.08.1985 when 'A' was already confirmed in the post of L.D. Clerk but 'B' was still not confirmed in the said post, the claim of 'A' for promotion against the vacancy reserved for Scheduled Caste should be entertained but 'B' need not be considered for such promotion against the vacancy reserved for Scheduled Tribe. In that event, the reserved vacancy (i.e. the 8th vacancy) should be filled up by a general candidate and principle of carry-forward should operate till the next reserved vacancy occurs in the roster. If, however, the proposal for promotion is taken up for consideration on or after 06.08.1985, when both 'A' and 'B' are already confirmed in the post of Lower Division Clerk, both of them deserve to be considered for promotion against the respective reserved vacancies. In such a situation 'A' and 'B', if found otherwise suitable for promotion, should, however, be allowed the benefit of promotion with effect from 04.06.1984 and 06.08.1985 respectively keeping the 3rd vacancy for the period from 01.04.1981 to 03.06.1984 and the 8th vacancy for the period from 01.04.1981 to 05.08.1985 unfilled.

2. This clarification is furnished in consultation with the Finance Department of this Government vide that Department's U.O. No. Gr. P/1185, dated 19.03.1990.

3. Similar cases of promotion, if there be any, decided earlier in any manner different from what has been indicated in the 1st paragraph of this memorandum, should now be reviewed and settled in accordance with the clarification furnished hereinbefore and appropriate remedial action should also be taken, where necessary, to ensure due benefit to the members of Scheduled Castes and Scheduled Tribes.

4. All appointing authorities under that Department should be instructed accordingly.

Sd/- S. Das,
Jt. Commissioner and ex-officio
Jt. Secretary.

No. 180(60)

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Calcutta, the 17th April, 1990.

To : The

.....Department of this Government.

Subject : Notification raising the percentages of reservation of vacancies in services and posts for the members belonging to Scheduled Castes and Scheduled Tribes.

The undersigned is directed to send herewith a copy of this Department's Notification No. 136-TW/EC, dated 27.03.1990 on the above subject, as published in the extraordinary issue of the Calcutta Gazette dated 27.03.1990 and to say that the percentages of reservation of vacancies in services and posts have been raised to 22% for the members belonging to Scheduled Castes and to 6% for the members belonging to Scheduled Tribes in respect of the vacancies to be filled up by direct recruitment as well as by promotion in all establishments as mentioned in clauses (b) and (c) of section 2 of the West Bengal Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1976. The provisions as contained in the enclosed Notification would come into effect on and from 27th March, 1990.

A 50-point roster of vacancies has also been prescribed in the enclosed Notification and the 1st, 7th, 11th, 15th, 18th, 21st, 28th, 32nd, 36th, 40th and the 47th points of the said roster shall be reserved for the members belonging to Scheduled Castes and the 4th, 24th and the 43rd points of the roster shall be reserved for the members belonging to Scheduled Tribes. The 20-point roster as prescribed under the Schedule to the West Bengal Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1976 would cease to operate with effect from 27.03.1990 and instead thereof the 50-point roster as prescribed in the enclosed Notification No. 136-TW/EC, dated 27.03.1990 would operate with effect from that date, which is the date of publication of the enclosed Notification. Accordingly, all appointing authorities shall be required to start the roster in the Register of appointments to be maintained in terms of rule 3 of the West Bengal Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Rules, 1976 afresh with effect from 27.03.1990.

That Department is, therefore, requested to communicate the provisions of the enclosed Notification to all establishments/offices subordinate to that Department and also to the organisation/institutions which are under the administrative control of that Department so as to ensure due observance of the provision of reservation prescribed therein by all concerned appointing authorities.

Sd/- **S. Das,**
*Joint commissioner for Reservation &
 Ex-officio Joint Secretary.*

2. A(d)

No. 136-TW/EC

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Calcutta, the 27th March, 1990

NOTIFICATION

In exercise of the powers conferred by the first proviso to clause (a) of section 4, and the proviso to clause (a) of section 5, of the West Bengal Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1976 (West Ben. Act XXVII of 1976), the Governor is pleased hereby to direct that with effect from the date of publication of this Notification in the “*Official Gazette*”, in all appointments to services and posts in any establishment as defined in clause (b) of section 2 of the said Act, which are to be filled up by direct recruitment or by promotion, twenty-two per cent of the vacancies shall be reserved for candidates belonging to the Scheduled Castes and six per cent for candidates belonging to the Scheduled Tribes in the manner set out in the second paragraph of this Notification.

2. The Governor is further pleased to direct that for the purpose of implementation of the 22% reservation quota for the Scheduled Castes and 6% reservation quota for the Scheduled Tribes in both recruitment and promotion of the candidates belonging to the above communities, the existing 20-point roster in clause (i) of the Schedule to the said Act shall be deemed to have been substituted by a 50-point roster in which the 1st, the 7th, the 11th, the 15th, the 18th, the 21st, the 28th, the 32nd, the 36th, the 40th and the 47th vacancies shall be reserved for the Scheduled Caste candidates and the 4th, the 24th and the 43rd vacancies shall be reserved for the Scheduled Tribes for the purpose of both recruitment and promotion in any establishment as defined in clause (b) of section 2 of the said Act.

By order of the Governor,
P. Chaudhuri,
Secy to the Govt. of West Bengal

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No. 700-TW/EC

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Calcutta, the 12th July, 1990.

MEMORANDUM

A question has been raised by some appointing authorities as to whether the “single-cadre-posts” should come under the purview of the Reservation Act (The West Bengal Act XXVII of 1976), in view of the judgment passed by the Supreme Court of India in Civil Appeal No. 2315 of 1981 as reported in AIR, 1988 S.C. 959. In this connection the undersigned is directed to say that the Reservation Act of West Bengal as referred to above does not conceive and hence, define and describe any connotation or denotation known as ‘single-cadre-post’.

After careful examination of the Reservation Act, 1976 and Rules framed there under, this Department observes that none of the relevant sections i.e. section 3 and section 6 of the Act, which prescribes areas of limitations in application of the reservation laws, has made any reference towards the bar of application of the reservation law as in the matter of so-called 'single-cadre-post'. In fact, since 1976, all appointing authorities are maintaining proper roster of vacancies both in single-cadre posts as well as in 'multi-posts cadres' and reservation was attributed to the prescribed serial numbers of the concerned vacancies. This system has worked well so far and no judicial question has even been raised against this system of filling up vacancies in the same assignment or in a type of assignments which appear rotationally reserved and unreserved as per seriality of such vacancies in the prescribed roster. This ensures 28% chances and 72% chances in all posts coming under the hold of reserved community as well as unreserved communities respectively both horizontally in total number of vacancies and vertically in hierarchical and feeder posts, may such post be singular or multiple in a cadre or establishment.

This department also observes that referred judgment of the Supreme Court does not directly relate to, and hence, having no bearing upon the judiciously equitable roster system of filling up the vacancies without reserving any fixed 'post' for any community whatsoever. But the said mistake was reportedly committed or attempted to be committed by the Government of Behar, permanently fixing up the post of Deputy Director (Homeopathic) for S.C. communities, which resulted in 100% reservation of a particular assignment, and the Supreme Court is right in its findings that such type of reservation violates the Articles 16(1) and 16(2) of the Constitution and hence bad in law. On the same analogy, de-reserving such posts, under a suitably adopted connotation of single-cadre-post also indirectly provides 100% reservation of such posts to the unreserved community, and hence hits Article 16(1) and 16(2) of the Constitution.

The State Government has never contemplated to dereserve such singular assignment and thus restrict the entry of the Scheduled Caste or Scheduled Tribe candidates to all such singular assignment in thousands of establishments and at the same time does not also agree to make it a complete monopoly sector for appointments of unreserved communities.

The State Government further opines that, the Supreme Court's Judgment in Civil Case Appeal No. 2315 of 1981, does not hit any provision of the West Bengal Act XXVII of 1976 and Rules framed there under, and hence does not affect its existing State policy as regards to reservation.

The undersigned is, therefore, directed to say that all vacancies, occurred, either in a so-called single-cadre-posts or in multi-posts cadre, must be filled up either by direct recruitment or by promotion as the case may be, uniformly applying the West Bengal Act XXVII of 1976 as amended up-to-date providing 22% reservation for SC and 6% reservation for ST candidates and introducing a 50-point roster vide *Calcutta Gazette* Notification No. 136-TW/EC dated the 27th March, 1990

Sd/- Sukumar Das
Joint Commissioner Reservation &
Ex-officio Joint Secretary, SC & TW Deptt.

MEMORANDUM

The erstwhile 20-point roster of vacancies prescribed under the West Bengal Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1976 stands substituted by a 50-point roster with effect from 27.3.90 (vide this Deptt's Notification No. 136-TW/EC dated 27.3.90).

A question has been raised by some appointing authorities as to whether any post under any single-post-cadre shall come under the purview of the Act *ibid*, and if so how the 50-point roster shall be followed in respect of such a post.

It may be observed in this connection that none of the relevant sections, viz., section 3 & 6 of the Act, prescribing the areas of exemption from reservation, excludes any post under any so-called single-post cadre from the scope of reservation. The aforesaid Act does not also contain any provision that makes a distinction between a post under a single-post cadre and a post under a multi-post-cadre, in so far as application of reservation is concerned.

A number of vacancies may occur at different points of time against a post under any single-post-cadre and, therefore, reservation can properly maintained in respect of such a post in accordance with the prescribed roster of vacancies in a *rotational manner*.

In fact, reservation has all along been maintained since the Act came into force w. e. f. 15.8.76 in respect of any post under single-post-cadre and also in respect of posts under multi-post-cadre, both in case of direct recruitment and promotion, in accordance with the prescribed roster.

With the introduction of the 50-point roster, in establishments created on or after 27.3.90 a large number of vacancies under single-post-cadres might be required to be reserved. In such cases, in the interest of parity and natural justice, it has been considered advisable to group such posts and list the vacancies together for the purpose of applying the 50-point roster as if all such vacancies belong to the same cadre. A post carrying a lower scale of pay shall have precedence over a post carrying a higher scale of pay while placing them in roster. Such grouping of vacancies is permissible only for once. After the initially available first vacancy under each single-post-cadre, so grouped together, is filled up, no further grouping is permissible and for the purpose of filling up subsequent vacancies under such single-post-cadre, the normal procedure of observance of the 50-point roster should be followed.

In all other cases, however, no such grouping is necessary and the 50-point roster shall be operative in a rotational manner, irrespective of the consideration as to whether the vacancy belongs to any post under single-post-cadre or under multi-post-cadre, both in direct recruitment and promotion.

All appointing authorities are instructed to act accordingly.

Sd/- **P.CHADHURI**,
Secretary

MEMORANDUM

Since the introduction of the 50-point roster of vacancies vide this Department's Notification No. 136-TW/EC dated 27.3.90, some queries have been received from some appointing authorities. The following clarifications/guidelines are given in respect of such queries:--

- (i) In cases of direct recruitment, all vacancies, as remained unfilled on 27.3.90 should be brought under the purview of the aforesaid Notification and the 50-point roster should be followed in filling up such vacancies.

However, only in those cases, where the process of selection of candidates was duly completed before 27.3.90 the erstwhile 20-point roster should be followed instead of the 50-point roster. By completion of selection process, it is meant that the selection of the candidates was duly ratified by the Selection Committee wherever constituted, or by the selecting authority, departmental or the P. S. C., W.B., as the case may be.

All other cases shall straightaway come under the pool of vacancies to be filled in accordance with the new dispensation as required in terms of the aforesaid notification.

- (ii) In cases of promotion, the date of occurrence of the vacancy in the promotion-post should be the guiding factor. In other words, vacancies occurring before 27.3.90 should be filled in accordance with the erstwhile 20-point roster and vacancies occurring on or after 27.3.90 should be filled up on the basis of the 50-point roster.
- (iii) The aforesaid Notification (vide no. 136-TW/EC dt., 27.3.90) applies to the whole of the State, needless to say, in all establishments covered by section 2(b) of the W. B. S.C.s & S. T.s (Reservation of Vacancies in Services and Posts) Act, 1976.
- (iv) The 50-point roster, when introduced shall commence from its first point.

All appointing authorities are instructed to act accordingly.

Sd/-P. CHAUDHURI
Secretary

MEMORANDUM

Subject: Procedure of maintenance of the 50-point roster of vacancies in the State Aided Secondary (including Junior High) and Higher Secondary Schools.

Notwithstanding anything contained otherwise in any other Order/Orders previously issued, the following procedure shall be applicable *with immediate* effect for the purpose of maintaining the 50-point roster of vacancies prescribed in this Deptt's Notification No. 136-TW/EC dt. 27.3.90 in all the State aided Secondary (including Junior High) and Higher Secondary Schools:--

1. Both the Secondary and Higher Secondary units in any particular school shall be considered as one single unit and all the posts in both the units shall be deemed to belong to one single establishment.
2. All the posts in any School shall be divided under two distinct categories, viz. (i) teaching category and (ii) non-teaching category.
3. * [The post of Headmaster, the post of Assistant Headmaster] and the posts of Assistant Teacher in any school shall be grouped together to constitute the teaching category, while all the other posts (including the post of Librarian) in the said school shall constitute a separate Group under the non-teaching category.
4. The 50-point roster of vacancies shall apply in relation to each of the aforesaid two groups of posts under the respective categories and it shall not apply individually in relation to any individual post under either group; one roster shall be maintained in respect of all the vacancies against all the posts grouped together under the teaching category; similarly, another roster shall be maintained in respect of all the vacancies against all the posts grouped together under the non-teaching category.
5. If any vacancy or vacancies occurred before 27.3.90 (i. e. the date from which the 50-point roster came into force) and if selection of candidates against such a vacancy or vacancies was completed either before 27.3.90 or thereafter, the said vacancy or vacancies, as the case might be, may be filled up on the basis of the said selection. In such an eventuality the deficiency, if any, in the intake of Scheduled Caste and/or Scheduled Tribe candidates against the quota of vacancies reserved for such candidates, on the said occasion of recruitment shall be adjusted against future recruitments on the immediately next occasion of recruitment or thereafter at the earliest chance under the appropriate category of posts or under the respective categories of posts, as it may be necessary.

* Posts of Headmaster and Assistant Headmaster are taken out of the purview of reservation vide No. 1170-SE(S) dated 14-09-1999 of School Education Department.

6. Recruitments made, if any, under the 50-point roster on or after 27.3.90 in any manner other than what has been prescribed hereinbefore shall be adjusted appropriately against future recruitments at the earliest chance so as to make up the deficiency, if any, in the intake of Scheduled Caste and/or Scheduled Tribe candidates as per reserved quota for such candidates as provided for in the 50-point roster.

Sd/- K.SATHIAVASAN
*Joint Commissioner for Reservation &
Ex-officio Joint Secretary*

2. A. 1

No. 510-TW/EC/MR—118/95

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Calcutta, the 15th June, 1995.

MEMORANDUM

Since the West Bengal Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) (Amendment) Act, 1994 (West Bengal Act XLII of 1994) has come into force with effect from the 16th day of January, 1995, the following guidelines are given for implementation of the 50-point roster of vacancies in partial modification of Memo No. 796-TW/EC/ MR—59/90 dated 20.8.1990:--

- (1) All vacancies in cases of direct recruitment should be filled up as per 50-point roster with effect from 16.1.95 irrespective of the dates of occurrence of the vacancies. However in those cases where enhanced percentage of reservation is applicable as per Memo No. 375-TW/EC dated 16.8.76 the 20-point roster as prescribed therein should be followed for giving effect to 25% reservation for Scheduled Castes and 10% reservation for Scheduled Tribes.
- (2) In all cases of promotion the 50-point roster should be followed in all vacancies with effect from 16.1.95 irrespective of the dates of occurrence of the vacancies.

Sd/-**Dr U.K. RAY**
Secretary
SC & TW Department

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[Published in the Calcutta Gazette Extraordinary dated 12th May, 2000]

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ORDER

WHEREAS some of the Universities have represented that they are finding it extremely difficult to maintain a single register of appointment for the entire cadre of lecturers irrespective of the departments under the teaching faculties, as required under rule 3 of the West Bengal Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Rules, 1976:

And, WHEREAS such universities have proposed that they may be allowed to maintain register of appointment department wise under the common appointing authority, namely, the Registrar;

And WHEREAS it is implied that difficulty arises in giving effect to the provisions of the West Bengal Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1976 (West Ben. Act XXVII of 1976) (hereinafter referred to as the said Act);

Now, THEREFORE, in exercise of the power conferred by section 10 of the said Act, the Governor is pleased hereby to direct as follows:--

1. (a) in spite of the fact that the Registrar is the appointing authority in respect of all the posts of a university, but university shall have the option to maintain the register of appointment for teaching posts department wise or centrally, as may be convenient to it under proper intimation to the Backward Classes Welfare Department of the State Government;

(b) the register of appointment for the teaching posts having the same scale of pay but not associated with any particular department shall be maintained in a common pool;
(c) the register of appointment for the non-teaching post shall, however, be maintained centrally and category-wise as usual by the Registrar of a university.
2. Any university opting to maintain department wise register of appointment for teaching posts shall reconstruct such registers with effect from the 27th March, 1990, as the starting point and shall proceed thereafter chronologically in accordance with 50-point/100-point roster as may be applicable, and shall get the reserved vacancies arising in consequence thereof adjusted suitably by carry-forward principle with the approval of the State Government in each individual case.
3. This order shall take immediate effect and the West Bengal Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Rules, 1976, shall be suitably amended in due course.

By order of the Governor,
Smt. K. Jhala
*Principal Secretary to the
Government of West Bengal and
Secy., Backward Classes Welfare Department.*
2A (K)

Government of West Bengal
School Education Department, Secondary Branch
Bikash Bhavan, Salt Lake, Calcutta 700091

Sub: Exclusion of single post of Headmaster/Headmistress in recognized Govt. aided Jr. High/High/Higher Secondary Schools, including Jr. High and High Madrasah and the post of Superintendent of recognized Govt. aided Senior Madrasah from the purview of reservation Roster.

Ref.: Review petition © No. 1749 of 1997 in Civil Appeal No. 3175 of 1997 (with Civil)-Appeal Nos. 2346 of 1981, 2345 of 1981; Special Leave Petition (Civil) Nos. 1 3148 of 1997, 2892 of 1983, 9252 of 1981 decision on April 17, 1998.

In compliance with the order “that there cannot be any reservation in a single-cadre post” passed by the Constitution Bench of the Hon’ble Supreme Court of India in the above noted cases under reference, the Ld. Legal Remembrancer and ex-officio Principal Secretary of the Govt. Of West Bengal has opined as follows: -

“Under the latest decision of the Apex Court even single-cadre posts cannot be clubbed together for making the Reservation Rule applicable to such posts. Earlier, clubbing together to all single-cadre posts of the same nature and category was possible for making applicable the Reservation Policy.

The Post of Headmaster or Assistant Headmaster cannot be put in the same cadre as that of teachers in any School. Thus, there is no scope legally to include the posts of a Headmaster/Asstt. Headmaster in the cadre of Teachers for making the Reservation Policy applicable.”

Now, therefore, I am directed by order of Governor to say that Governor is pleased to exclude the post of Headmaster/Headmistress of recognized Govt. aided Jr. High/High/Higher Secondary Schools, including Jr. High and High Madrasah and the post of Superintendent of recognized Govt. aided Senior Madrasah from the purview of the Memo. No. 40-TW/EC, dated 22.01.1991 of SC and TW (BCW) Department for filling up of that post with immediate effect.

All concerned are being informed accordingly for taking necessary action at their end.

Sd/- **Nikhilesh Das,**
Secretary to the Govt. of West Bengal
School Education Deptt.

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Dereservation of Reserved Vacancies

2B (a)

GOVERNMENT OF WEST BENGAL
Backward Classes Welfare Department
Writers' Buildings

No. 319(17)-BCW/RC

Dated, Calcutta, the 2nd November, 1998

From: A. K. Das
Joint Commissioner for Reservation &
Ex-officio Joint Secretary to the

Govt. of West Bengal
To: The District Magistrate,
.....

Subject: De-reservation proposals in respect of teaching posts
of different schools

Sir,

I am directed to say that there are some pending proposals in this Department for dereservation of teaching posts in different schools in some of the Districts and many more proposals are being received from time to time. These proposals have been initiated due to non-availability of suitable candidates of specified categories for the reserved posts of SC/ST. With coming into force of West Bengal School Service Commission Act, 1997, the School Management Committees have been debarred w. e. f. 1-1-1997 to make any appointment in the teaching posts under them without the recommendation of School Service Commission. The School Service Commission is now in the process of finalisation of the panel for the posts of Assistant Teacher and the Commission is likely to take up the exercise for preparation of panel for the post of Head Masters for schools shortly. In view of this position, the Government in the Department of Backward Classes Welfare considers that it would not be worthwhile to dereserve the vacancies for which proposals are already pending with the Department or are being received from time to time with the non-availability certificate from the Employment Exchange and non-response to published advertisement as the school management committees, even in case of such dereservation being allowed will not be in a position to make any appointment without reference to the Commission and the Commission is yet to finalise the panel for the candidates.

In the circumstances, I am directed to say that it has been decided not to consider any pending or new proposal for dereservation of teaching posts in schools with the non-availability certificate from the Employment Exchange or due to non-response in reply to direct advertisement by the School Authorities. All pending proposals may, accordingly, be considered as rejected. De-reservation proposal for teaching posts in schools shall henceforth be considered only when it is accompanied with non-availability certificate from the School Service Commission.

This may be brought to the notice of all concerned.

Yours faithfully,
Sd/ **A. K. Das**

Joint Commissioner for Reservation &
Ex-officio Joint Secretary to the
Govt. of West Bengal

2B(b)

GOVERNMENT OF WEST BENGAL
BACKWARD CLASSES WELFARE DEPARTMENT
Writers' Buildings, Calcutta—700001

No. 98(91)--BCW/MRD—156/99

Calcutta, the 7th January, 2000

From: Joint Commissioner for Reservation

and ex-officio Joint Secretary to the
Government of West Bengal

- To: 1) The Principal Secretary/ Secretary,
2) The District Magistrate,
3) Registrar,
4) D. P. I.,
5) Director of School Education

Sir,

You may be aware that in case of Direct Recruitment there is a provision for dereservation of vacancies meant for Scheduled Castes and Scheduled Tribes candidates, in cases where suitable candidates from right community are not available but it is necessary to fill up the vacancies urgently in the interest of public service, under sub-section (2) of section 6 of the West Bengal Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1976. According to this provision of Law, we are receiving a large number of applications/proposals from various Appointing Authorities/Departments under this Government for de-reservation. Majority of these proposals are from the Educational Institutions. While examining these proposals/prayers, a number of inadequacies have been found, which have been responsible for delay in the disposal of these matters.

After careful consideration of all aspects, a consolidated set of guidelines for initiation of proposals for dereservation has been prepared to take care of the errors and omissions being committed by the concerned appointing authorities.

I am now directed to forward herewith a copy of the set of these guidelines along with copies of all the enclosures referred to therein and to request you to kindly circulate the same to all the appointing the authorities under your administrative control for strict adherence by them at the time of applying for dereservation of any vacancy meant for Scheduled Castes/ Scheduled Tribes or Other Backward Classes candidates.

Yours faithfully,
Sd/-A. K. Das
Joint Commissioner reservation
&
Ex-officio Joint Secretary

**GUIDELINES FOR SUBMISSION OF PROPOSAL FOR DE-RESERVATION BY THE
APPOINTING AUTHORITIES**
(Annexure to Memo No. 98(91)-BCW/MRD—156/99 dt 7th January, 2000. of the
Backward Classes Welfare Department)

1. Applications for de-reservation of vacancies reserved for Scheduled Castes, Scheduled tribes and Other Backward Classes categories of candidates due to non-availability of suitable candidates from the right community is to be made by the appointing authorities concerned in the

format prescribed by this Department (Copy of latest revised format enclosed for ready reference--Annexure I) completed with all relevant information, properly signed and recommended by the appropriate authority, wherever necessary.

2. Separate application is to be made for each vacancy proposed to be de-reserved.
3. The application should be accompanied by the authenticated copies of following documents/information.
 - (a) Certificate of non-availability of candidates of right community from the authorities competent to sponsor candidates for appointment like WPSC, WBCSC, WBSSC, Employment Exchange etc.
 - (b) Paper cutting of advertisements calling for applications from intending candidates for filling up the vacancies, in cases, where appointment is made otherwise than on the recommendation of any statutory authorities, or in cases, where such open market advertisement is necessitated, as per advice of the sponsoring authorities.
 - (c) A copy of the Register of Appointment in the format prescribed vide **APPENDIX I** to the West Bengal Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Rules, 1976 as required vide Rule 4 of the said Rules. A specimen copy of the said Appointment Register is enclosed for ready reference. (**Annexure II**)*
 - (d) In cases, where the appointing authorities have filled up in the past vacancies reserved for Scheduled Castes, Scheduled Tribes and Other Backward Classes by General candidates without proper de-reservation orders from the Government in the Backward Classes Welfare Department, the full facts of these cases with an explanation as to why and under what circumstances this was done, for regularisation of these cases now by issue of suitable Government order.
 - (e) While drawing up the Appointment Register, it would be ensured that it starts with the vacancy, as prevailing in the establishment concerned on 27.03.1990, the cut-off date prescribed under erstwhile Scheduled Castes/ Scheduled Tribes Department's (now renamed Backward Classes Welfare Department) Notification Nos. 136-TW/EC dt. 27-03-1990, 180(60)-TW/EC dt. 17-04-1990 and 796-TW/EC dt 20-08-1990 and be continued thereafter in chronological order as they occur from time to time. The Register of Appointment in Appendix I shall be, as per 50-point roster from 27-03-1990 up to 05-04-1995 and shall get converted to accommodate 100-point roster from 06-04-1995 maintaining the seriality in roster position obtaining on 05-04-1995. There shall be separate Appointment Registers for each cadre of post in each establishment.

* Available in West Bengal Scheduled Caste and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Rules, 1976.

4. Where in an establishment there are cases of vacancies of reserved category filled-up earlier by general candidates without any authorisation from the Government, these are to be regularised first by issue of Government order determining specific points of roster, to which reservation against these unauthorisedly filled-up vacancies shall be carried forward.

The current prayer for de-reservation from such establishments can be taken up for consideration only after regularisation of past cases, which will identify the exact roster position of present vacancies and its status with regard to reservation norms.

ANNEXURE I

APPLICATION FORM FOR DERESERVATION

To
The Principal Secretary,
Backward Classes Welfare Department,

Government of West Bengal,
Writers' Buildings,
Calcutta—700001

Through : The District Magistrate and District
Reservation Commissioner,

.....

(in case of Establishments situated in the Districts)

Sir/Madam,

I hereby apply for dereservation of the vacancy, particulars of which are furnished below for your consideration and issue of necessary orders

Yours faithfully,

(Appointing Authority)

1. Name of the Office/Institution :
2. Name and designation of the Appointing authority:
3. Name of the post against which vacancy has occurred:
4. Scale of pay for the post:
5. Date of occurrence of vacancy:
6. Exact Roster points of the vacancy and the community for which it is reserved (SC/ST/OBC)
(Enclose authenticated copy of the Register of Appointment in Appendix I)
7. Manner of selection (i. e. whether through Service Commissions/ Employment Exchange/Open market etc.)
8. In cases of appointment through Employment Exchange—
 - (i) Whether reserved vacancies notified to the Employment Exchange of the districts and Special Cell of Employment

Exchange, Salt Lake:

- (ii) Date of Notification to Employment Exchange:
- (iii) No. of candidates forwarded by Employment Exchange:

9. In case of open market recruitment through advertisement in daily news papers—

(Enclose authenticated copies of paper cuttings)

- (i) Names of news papers to which advertisements have been released:
- (ii) Dates on which the Advertisements have appeared in such news papers:
- (iii) Last date of receiving application:
- (iv) No. of applications from SC/ST/OBC candidates received in response to the advertisement.
(category-wise, where more than one category is involved)

10. In cases of selection of candidates by appointing authorities through selection test and interview—

- (i) No. of SC/ST/OBC candidates called for interview:
- (ii) No. of SC/ST/OBC candidates attending the interview:
- (iii) Name and designation of Officer representing this Department in the Board of Interview (in terms of this Department's Memo No. 126(55)-TW/EC

dated 02-03-1993)

11. In cases of appointments on the recommendations of Service Commissions, whether reserved vacancies are notified to such Commissions:
If so, date and particulars of notifying:
12. Particulars of non-availability certificate from Employment Exchange/PSC/CSC/MSR/RSC/SSC (Enclose authenticated copies)
13. Total number of existing employees in the same cadre (also, number of existing teachers in the same subject, in case of educational institutions):
14. Why dereservation is required:
15. Total No. of sanctioned strength in the cadre and percentage of SC/ST among the existing staff strength:
16. (i) Has any vacancy been dereserved previously ?
(ii) If so, Order No. and roster point of such dereserved vacancy:
17. List of supporting documents furnished

I do hereby declare that particulars furnished hereinbefore are true to the best of my knowledge and belief.

Authority.

Signature of Appointing

18. * (i) Remarks/Recommendation of Head of Administrative Department (in case of Calcutta):

(ii) Remarks/Recommendation of
-

District Reservation
Commissioner (in case of
Districts):

* Director of Public Instructions authorised to act as an authority for assessment of the necessity of dereservation of teaching posts in colleges all over the State in addition to the District Magistrates vide Backward Classes Welfare Deptt's Memo No. 794-BCW dt 16th Feb, 2001 with prescribed form for certification as follows:

“It has been found on assessment of necessity of the college in regard to the teaching posts that vacancy Number (Roster position of vacancy).....in (subject of teaching)..... is required to be filled up immediately in the academic interest. As this is a vacancy reserved for (SC/ST/OBC).....and such candidate is not available, it is recommended for dereservation.”

2B(c)

**Delegation of powers of dereservation to District Magistrates in respect of
certain classes of Educational Institutions**

**GOVERNMENT OF WEST BENGAL
Backward Classes Welfare Department
Writers' Buildings, Calcutta—1**

No. 4787(17)-BCW/MR—176/2000

Calcutta, the 24th November, 2000

From: Sri Niranjan Bhattacharjee,
Assistant Commissioner for Reservation
and ex-officio Assistant Secretary to
the Government of West Bengal

To: The District Magistrate,
.....

MEMORANDUM

Subject: Delegation of powers of de-reservation in respect
of schools within his jurisdiction

The undersigned is directed to say that a Notification bearing No. 4337-BCW, dt. 20.10.2000 delegating powers of dereservation under sub-section (2A) of the West Bengal Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1976 as amended in 2000 has been issued and a copy of the Gazette publishing the said Notification as also a copy of the West Bengal Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts)(Second Amendment) Act, 2000 under which Government has been empowered to delegate powers of dereservation to sub-ordinate authorities is enclosed.

2. A note on dealing with cases for dereservation at the District Level as also a standard format in which the orders of dereservation to be issued are also enclosed. The undersigned is directed to say that all orders on de-reservation by the District authorities should be issued in this standard format with all particulars duly mentioned.

3. The undersigned is, further, directed to say that it will be necessary for the District authorities to submit a monthly report on disposal of applications for dereservation in their respective jurisdiction. A format for such report is enclosed. The report should reach the Joint Commissioner for Reservation and ex-officio Joint Secretary by the 10th of the month following the month under report.

4. A receipt of this Memorandum and its enclosures may kindly be acknowledged.

Sd/- **N. Bhattacharjee**
Assistant Commissioner for Reservation &
Ex-officio Assistant Secretary

[Published in the Calcutta Gazette Extraordinary on 16th October, 2000]

GOVERNMENT OF WEST BENGAL
BACKWARD CLASSES WELFARE DEPARTMENT
Writers' Buildings, Calcutta

No. 4136-BCW/MR—176/2000
2000

Calcutta, the 16th October,

NOTIFICATION

In exercise of the power conferred by the second proviso to sub-section (2) of section 6 of the West Bengal Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1976 (West Ben. Act XXVII of 1976) (hereinafter referred to as the said Act), the Governor is pleased hereby to empower, with effect from the date of publication of this notification in the *Official Gazette*, the District Magistrate and District Commissioner for Reservation of each district to de-reserve a reserved vacancy, as provided in sub-section (2) of section 6 of the said Act, in respect of Primary, Secondary and Higher Secondary Schools falling within his territorial jurisdiction.

By order of the Governor,
K. JHALA,
Principal Secy. to the Govt. Of West Bengal

NOTE ON DEALING WITH CASES FOR DERESERVATION

District Magistrates and District Reservation Commissioners have been delegated powers of de-reservation in respect of Primary, Secondary and Higher Secondary Schools within their respective jurisdiction.

While dealing with de-reservation cases, it should be borne in mind by everyone concerned that de-reservation is an extra-ordinary step and should be resorted to only when it is unavoidable. It should be noted that no appointing authority has any power to fill-up a reserved vacancy by candidates other than those belonging to the prescribed communities. The question of de-reservation arises only when a suitable candidate from the right community is not available and in the public interest, it is necessary to fill up a vacancy urgently. The basic tests for considering a proposal for de-reservation is thus, (1) whether there is satisfactory evidence of non-availability of suitable candidate from the right community and (2) whether it is essential in the public interest to fill up the vacancy without delay. It should be noted that except where otherwise provided School Service Commission in respect of Secondary, Higher Secondary Schools and Madrasahs and concerned Employment Exchanges in case of Primary Schools are only authorised organisations to sponsor candidates and as such, they are the competent authorities for issue of non-availability certificates in respect of suitable reserved category candidates.

If, on the basis available records, the authority empowered to dereserve a vacancy is of the opinion that the above mentioned two tests have been satisfied, he may order de-reservation of the vacancy. The manner of filing the prayer for de-reservation by the appointing authorities and the documents to be furnished therewith have been detailed in a booklet published by the Department, copies of which have been circulated separately. In the said format of application for de-reservation there is a column for noting the recommendation of the District Magistrate and District Reservation Commissioner. In cases where District Magistrate and District Reservation Commissioner shall be empowered to dereserve a vacancy, the said column may be filled up by the local officer of the concerned administrative Department. As per Law, whenever a reserved vacancy is dereserved, subsequent available unreserved vacancy is to be reserved in exchange for the particular community for which the original vacancy was reserved. It has, therefore, to be ensured that the exact vacancy to which reservation move forward consequent on dereservation of a reserved vacancy is identified while making the order of dereservation and the exact roster position of the vacancy becoming thus reserved on carry forward principle is specifically mentioned in the order of dereservation.

SPECIMEN ORDER FORM

GOVERNMENT OF WEST BENGAL
Office of the District Magistrate
.....District

No.....

Dated.....,the.....

ORDER

WHEREAS, there is a vacancy available for being filled up in the post ofin.....(Name of School) at.....(Address) under the administrative control of the(Name of Administrative Department), Government of West Bengal;

WHEREAS, the said vacancy is reserved for.....(Scheduled Caste/Scheduled Tribe, as applicable) being the.....vacancy in the 100-point roster of vacancies as prescribed in Notification No. 134-BCW/RC dt. 25-03-1999 issued by the Backward Classes Welfare Department, Government of West Bengal;

WHEREAS, all reasonable steps were taken by the School authorities to fill up the vacancy by a candidate from the community for which it is reserved;

WHEREAS, no qualified candidate has been available for filling up the said vacancy reserved for theScheduled Caste/Scheduled Tribe, as applicable);

WHEREAS, the School authorities have applied for de-reservation of the said vacancy for filling up by an available candidate;

WHEREAS,(Name of the District Inspector of Schools) consider it necessary and expedient to fill up the said vacancy in the public interest and has accordingly proposed for its being treated as unreserved vacancy and filled up as such;

AND WHEREAS, I am satisfied that there is need to de-reserve the vacancy in the public interest;

NOW, THEREFORE, in terms of the provisions contained in sub-section (2) of Section 6 of the West Bengal Scheduled Castes and Scheduled Tribes (Reservation of vacancies in Services and Posts) Act, 1976 as amended by the West Bengal Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) (Amendment) Act, 1994 and the West Bengal Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) (Second Amendment) Act, 2000 read with Backward Classes Welfare Department, Government of West Bengal Notification No. 4316-BCW, dated the 16th October, 2000 (published in the *Calcutta Gazette, Extraordinary*, dated the 16th October, 2000), I hereby de-reserve the vacancy in question for its being filled up as an unreserved vacancy subject to the condition that the reservation for the Scheduled(Caste/Tribe) against the vacancy so dereserved hereinbefore, shall be carried forward against the subsequent

unreserved vacancy being thevacancy in the roster as aforesaid
(mention exact roster position of the corresponding unreserved vacancy)

District Magistrate & District
Reservation Commissioner,
.....District

2B(d)

**Authorisation of Director of Public Instruction as recommending authority in
respect of de-reservation prayers from Colleges**

**GOVERNMENT OF WEST BENGAL
Backward Classes Welfare Department
Writers' Buildings, Calcutta—700001**

No. 794-BCW/MRD—156/99

Dated, the 16th February, 2001

MEMORANDUM

The undersigned is directed to refer to this Department's No. 98(91)-BCW dt. 07-01-2000 wherein a set of guidelines for initiation of proposals for de-reservation of reserved vacancies in the public interest and the format of application for dereservation of reserved vacancies in public interest and the format of application for dereservation were prescribed. According to the said guidelines, all proposals for dereservation in respect of establishments situated in the Districts were to be routed through the concerned District Magistrates.

2. The question of routing the de-reservation proposals through the concerned District Magistrate has since been reviewed in respect of teaching posts of the colleges. It has been represented to the Government from various quarters that the academic interest is being adversely affected because of a large number of reserved vacancies in different colleges remaining unfilled due to non-availability of suitable candidates from the prescribed communities. To expedite the process of de-reservation in the above context, it is considered necessary to declare Director of Public Instructions, West Bengal also as a recommending authority in respect of dereservation proposals for teaching posts in colleges.

3. After careful consideration of all these aspects, the Governor is now pleased to order in partial modification of memo no. 98(91)-BCW dt 07-01-2000 that henceforth

the Director of Public Instructions, West Bengal, shall act as an authority for assessment of the necessity of dereservation of teaching posts in colleges all over the State in addition to the District Magistrates who have been so authorised earlier. Director of Public Instructions, West Bengal, shall accordingly record the recommendation on individual application for dereservation in respect of teaching posts in the colleges in the following format :--

“It has been found on assessment of necessity of the college in regard to the teaching _____ post _____ that _____ vacancy _____ no.*
.....in**is required to be filled up
immediately in the academic interest. As this is a vacancy reserved for***
.....and such candidate is not available, it is
recommended for dereservation.”

4. This recommendation will be recorded against Column 18(i) of the prescribed application form for dereservation.

Sd/ A. K. Das
*Joint Commissioner for reservation &
ex-officio Joint Secretary to the
Govt. of West Bengal*

* Roster position of the vacancy to be indicated

** Subject of teaching to be mentioned

*** Scheduled Caste/Scheduled Tribe/Other Backward Classes as applicable to be mentioned.
