

ACTS & RULES ON RESERVATION AND ALLIED MATTERS

(a) RESERVATION ACT

GOVT. OF WEST BENGAL LEGISLATIVE DEPARTMENT

NOTIFICATION

No. 1079-L, --5th May 1976. —The following Act of the West Bengal Legislature, having been assented to by the Governor, is hereby published for general information:--

West Bengal Act XXVII of 1976

The West Bengal Scheduled Castes and Scheduled Tribes (Reservation of vacancies in Services and Posts) Act, 1976

[Passed by the West Bengal Legislature]

[Assent of the Governor was first published in the Calcutta Gazette, Extraordinary, of the 5th May, 1976]

An Act to provide for the reservation of vacancies in services and posts for the members of the Scheduled Castes and Scheduled Tribes.

WHEREAS the members of the Scheduled Castes and Scheduled Tribes who are backward classes of citizens are not adequately represented in the services and posts within the State;

And WHEREAS it is expedient to provide for the reservation of vacancies in services and posts for them;

It is hereby enacted in the Twenty-seventh Year of the Republic of India, by the Legislature of West Bengal, as follow

- Short title, extent and commencement**
- (1) This Act may be called the West Bengal Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1976.
 - (2) It extends to the whole of West Bengal.
 - (3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint*

2. In this Act, unless the context otherwise requires, --

- Definition**
- (a) “appointing authority”, in relation to a service or post in an establishment, means the authority empowered to make appointment to such service or post;

* 15th Day of August, 1976 appointed as the date of effect vide Notification No. 370-TW/EC dated 14th August, 1976 published in the Calcutta Gazette, Extraordinary dated 14th Aug, 1976.

(b) “establishment” means any office of the State Government, a local or statutory authority constituted under any State Act for the time being in force, or a corporation in which not less than fifty-one per cent of the paid up share capital is held by the State Government, and includes universities and colleges affiliated to the universities, primary and secondary schools and also other educational institutions which are owned or aided by the State Government and also includes an establishment in public sector;

(c) “establishment in public sector” means any industry, trade, business or occupation owned, controlled or managed by—

I of 1956

- (i) the State Government or any department of the State Government,
- (ii) a Government Company as defined in section 617 of the Companies Act, 1956 or a Corporation established by or under a Central or State Act, in which not less than fifty-one per cent of the paid up share capital is held by the State Government,
- (iii) a local or statutory authority, constituted under any State Act for the time being in force;

(d) “establishment in private sector” means any industry, trade, business or occupation which is not an establishment in public sector;

(e) “Schedule” means the Schedule appended to this Act.

3. This Act shall not apply in relation to, -

Act not to apply in relation to certain employments

- (a) any employment under the Central Government;
- (b) any employment in the West Bengal Higher Judicial Service;
- (c) ¹Omitted;
- (d) any employment in private sector;
- (e) any employment in domestic service.

² 4. (1) After the commencement of this Act all appointments to services and posts in an establishment which are to be filled up by direct recruitment shall be regulated in the following manner, --

Reservation for Scheduled Castes and Scheduled Tribes in vacancies to be filled up by direct recruitment.

³ (a) subject to the other provisions of this Act twenty-two per cent of the vacancies shall be reserved for candidates belonging to Scheduled Castes and six per cent for candidates belonging to Scheduled Tribes, in the manner set out in Schedule I⁴

Provided that the State Government may, from time to time, by notification in the *Official Gazette*, increase the percentage so, however, that the reservation shall not exceed twenty-five per cent in the case of Scheduled Castes and ten per cent in the case of Scheduled Tribes:

¹ Vide West Bengal Act XLII of 1994 w. e. f. 16-1-1995

² Vide West Bengal Act XLII of 1980

³ Vide West Bengal Act XLII of 1994

⁴ Vide West Bengal Act XXIV of 2000 w. e. f. 30-8-2000

Provided further that different percentages may be fixed by the State Government for different districts in accordance with the percentages of population of Scheduled Castes and Scheduled Castes and Scheduled Tribes in such districts:

Provided also that in respect of the West Bengal Civil Service (Judicial), the percentage shall be ten for Scheduled Castes and five for Scheduled Tribes;

- (b) fees, if any, prescribed for any examination for selection to any service or post shall not be charged⁵ in the case of candidates belonging to the Scheduled Castes or the Scheduled Tribes;
- (c) the members of the Scheduled Castes and the Scheduled Tribes shall be entitled to a concession of five years over the prescribed maximum age limit for appointment to any service or post.

⁶ (2) The member of any Scheduled Caste or Scheduled Tribe candidate qualifying on merit for appointment to any unreserved vacancy in a service or post in any establishment to be filled up by direct recruitment shall not be deducted from the quota reserved in such service or post for such candidate under sub-section (1).

5. Reservation for members of the Scheduled Castes and the Scheduled Tribes in vacancies to be filled up by promotion in any establishment shall be regulated in the following manner, namely, --

Reservation for Scheduled Castes and Scheduled Tribes in vacancies to be filled up by promotion.

⁷ (a) There shall be reservation at twenty-two per cent for members of the Scheduled Castes and six per cent for members of the Scheduled Tribes **in the manner set out in Schedule II:**⁸

Provided that the State Government may, from time to time, by notification in the *Official Gazette*, increase the percentage so, however, that the reservation shall not exceed twenty-five per cent in the case of Scheduled Castes and ten per cent in the case of Scheduled Tribes:

⁹ “Provided further that the number of any Scheduled Caste or Scheduled Tribe employee appointed on promotion to any unreserved vacancy in a service or post in any establishment to be filled up by promotion shall not be deducted from the quota reserved in such service or post for the members of the Scheduled Castes or Scheduled Tribes under this section.”

¹⁰(b) “There shall be no reservation in any post in a scale of pay, the maximum of which exceeds Rs. 18,300;”

¹¹(c) “A separate fifty-point roster shall be maintained by every establishment in the manner set out in the Schedule.”

¹² 5A. “A candidate who claims to be a member of the Scheduled Castes or the

Certificate of identification

Scheduled Tribes shall support his candidature by a certificate of Identification in accordance with the provisions of the West Bengal Scheduled Castes and Scheduled Tribes (Identification) Act, 1994.”

**West Ben. Act
XXXVIII of 1994**

⁵ Vide West Bengal Act XXIV of 2000 w. e. f. 30-8-2000

⁶ Vide West Bengal Act XLII of 1980

⁷ Vide West Bengal Act XLII of 1994

⁸ Vide West Bengal Act XXIV of 2000.

⁹ Vide West Bengal Act XXXI of 1983

¹⁰ Vide West Bengal Act XI of 2000 w. e. f. 01-01-1996

¹¹ Vide West Bengal Act XLII of 1994.

¹² Vide West Bengal Act XV of 1996 w. e. f. 1-1-1996

¹³6. (1) There shall be no de-reservation of any reserved vacancy by any appointing authority in any post in an establishment which is required to be filled up by direct recruitment. In the absence of qualified Scheduled Caste or Scheduled Tribe candidate, as the case may be, to fill up such vacancy, such vacancy shall remain unfilled.

¹³(2) “Notwithstanding anything contained in sub-section (1), if, in the public interest, it is necessary to fill up any vacancy as aforesaid remaining unfilled on account of non-availability of a qualified Scheduled Caste or Scheduled Tribes candidate, as the case may be, the appointing authority shall refer the vacancy to the State Government for dereservation. Upon such reference, the State Government may, if it is satisfied that it is necessary or expedient so to do, by order, de-reserve the vacancy, subject to the condition that the reservation against the vacancy so dereserved shall be carried forward against the subsequent unreserved vacancy.”

Dereservation of reserved vacancy.

¹⁴“Provided that the State Government may, if it is satisfied that the appointing authority by genuine mistake or on account of an error of judgment or owing to ignorance has filled up any reserved vacancy otherwise than by a candidate for whom the vacancy is reserved and that there has been no *mala fide* intention in this regard on the part of the appointing authority, by order in writing, regularise the appointment, if so applied for by the appointing authority, on the basis of the carry forward principle. In such case, reservation against the reserved vacancy already filled up otherwise than by a candidate belonging to Scheduled Caste or Scheduled Tribe for whom the vacancy was originally reserved, shall be carried forward to the nearest un-reserved vacancy available at the time of consideration of any application:

Provided further that the State Government may, if it considers it necessary or expedient so to do, by notification in the *Official Gazette*, empower any other authority not below the rank of District Magistrate and District Commissioner for Reservation to exercise the power of the State Government to de-reserve a reserved vacancy under this sub-section.”

¹⁴“(2A) The appointing authority shall, for the purposes of sub-section (2), make an application to the State Government in such Form and in such manner, as may be prescribed by the State Government.”

¹⁵“(3) Notwithstanding anything contained in the foregoing provisions of this section or elsewhere in this Act, if, in the public interest, it is necessary or expedient to fill up any vacancy in any post in any primary, secondary or higher secondary school in any district owned or aided by the State Government, caused by deputation or leave of the incumbent of that post for a period not exceeding ten months and remaining unfilled on account of non-availability of a qualified Scheduled Caste or Scheduled Tribe candidate, as the case may be, the appointing authority may refer the vacancy to the District Commissioner for Reservation, referred to in sub-section (1), or sub-section (1A) as the case may be, of section 6B, for that district for de-reservation. Upon such reference, the District Commissioner for Reservation as aforesaid may, if he is satisfied that it is necessary or expedient so to do, by order, dereserve the vacancy, subject to the condition that the reservation

¹³ Vide West Bengal Act XLII of 1994 w. e. f. 16-1-1995

¹⁴ Vide West Bengal Act XXIV of 2000 with immediate effect

¹⁵ Vide West Bengal Act XV of 1996.

against the vacancy so dereserved shall be carried forward against the subsequent unreserved vacancy in any such post caused by such deputation or leave for such period.”

- ¹⁶6A(1) The State Government may appoint any officer, not below the rank of Secy to the Commissioner for reservation Govt.of West Bengal, to be the Commissioner for Reservation, West Bengal (hereinafter referred to as the Commissioner.)

Explanation.—Secretary shall include a Special Secretary.

(2). The Commissioner shall be responsible for ensuring reservation of vacancies in services and posts for the members of the Scheduled Castes and the Scheduled Tribes under this Act. by an appointing authority—

- (a) having territorial jurisdiction throughout West Bengal, or
¹⁷“(a1) having its offices and fixed territorial jurisdiction in Calcutta, or”;
(b) having its offices in Calcutta without having any fixed territorial jurisdiction.

- ¹⁸“(2A) (a). The State Government may appoint an officer, not below the rank of Joint Secretary to the Government of West Bengal, to be the Joint Commissioner for Reservation, West Bengal (hereinafter referred to as the Joint Commissioner), an officer, not below the rank of Deputy Secretary to the Government of West Bengal, to be the Deputy Commissioner for Reservation, West Bengal (hereinafter referred to as the Deputy Commissioner), and an officer, not below the rank of Assistant Secretary to the Government of West Bengal, to be the Assistant Commissioner for Reservation, West Bengal (hereinafter referred to as the Assistant Commissioner).
- (b) The Joint Commissioner, the Deputy Commissioner, and the Assistant Commissioner shall have the powers of the Commissioner for the purposes of this Act, subject to superintendence and control of the Commissioner.”;

Explanation.- “Calcutta” shall mean the town of Calcutta as defined in section 3 of the Calcutta Police Act, 1866.

Ben. Act IV of 1866

- (3). If any appointing authority referred to in sub-section (2) contravenes any provision of this Act and thereby commits an offence punishable under sec 7, the Commissioner, or any Officer, not below the rank of an Inspector of Backward Classes Welfare Department,¹⁹ authorised by him in this behalf, may file a complaint in any court having jurisdiction against such appointing authority, and thereupon such court shall, subject to the provision of section 8, take cognizance of such offence.
- (4) “ Where a complaint is filed in any court having jurisdiction against an appointing authority under sub-section (3) for contravening any provision of this Act and thereby committing an offence punishable under section 7, the burden of proof that no contravention of any provision of this Act has been made by him, shall lie with him.”

¹⁶ Vide West Bengal Act XLII of 1994 w. e. f. 16-1-1995

¹⁷ Vide West Bengal Act XV of 1996

¹⁸ Vide West Bengal Act XXIV of 2000 with immediate effect

¹⁹ The words “Inspector of Scheduled Castes and Tribes Welfare Department” substituted by the words “an Inspector of Backward Classes Welfare Department” vide West Ben. Act XXIV of 2000 w. e. f. 30-08-2000

²⁰6B. (1) **District Commissioner for Reservation** The State Government may appoint any District Magistrate of a district to be the District Commissioner for Reservation for that district (hereinafter referred to as the District Commissioner).

Explanation. - “District Magistrate” shall include an Additional District Magistrate.

²¹ (1A) “Omitted”

(2). The District Commissioner shall be responsible for ensuring reservation of vacancies in services and posts for the members of the Scheduled Castes and the Scheduled Tribes under this Act by an appointing authority-

(a) having territorial jurisdiction in the whole, or any part, of the district or

(b) having no fixed territorial jurisdiction in the district, but having his office in the district to which the jurisdiction of the District Commissioner extends.

(3). If any appointing authority referred to in sub-section (2) contravenes any provision of this Act and thereby commits an offence punishable under section 7, the District Commissioner or any officer, not below the rank of an Inspector of Backward Classes Welfare Department,²² authorised by him in this behalf, may file a complaint in any court having jurisdiction against such appointing authority, and thereupon such court shall, subject to the provisions of section 8, take cognizance of such offence.

²⁰(4) Where a complaint is filed in any court having jurisdiction against an appointing authority under sub-section (3) for contravening any provision of this Act and thereby committing an offence punishable under section 7, the burden of proof that no contravention of any provision of this Act has been made by him, shall lie with him.

²³6C. For the purposes of section 6A and 6B—

Territorial jurisdiction

(a) Territorial jurisdiction shall, in relation to an appointing authority mean the area to which its administrative jurisdiction extends; and

(b) an appointing authority, whose administrative jurisdiction does not extend to any fixed area, shall be deemed to be an appointing authority without having any fixed territorial jurisdiction.

²⁰7. If an appointing authority makes an appointment in contravention of the provisions of section 4 or section 5, or fails to maintain records, or to furnish the annual return, referred to **Penalty** sub-section (1)

of section 12, he shall be punishable with imprisonment for a term of five years, or with fine of two thousand and five hundred rupees, or with both;

Provided that nothing contained in this section shall apply in relation to an appointment to any service or post of which the appointing authority is the Governor.

²⁰ Vide West Bengal Act XV of 1996

²¹ Vide West Bengal Act XXIV of 2000 with immediate effect

²² Vide West Bengal Act XXIV of 2000 with immediate effect

²³ Vide West Bengal Act XLII of 1994 w. e. f.16-1-1995

8. No prosecution for an offence under Act shall be instituted except by, or with the sanction of the State Government.
9. No suit, prosecution or other legal proceeding shall lie against any person for anything, which is in good faith done or intended to be done under this Act.
10. If any difficulty arises in giving effect to the provision of this Act, the State Government may take such steps or issue such orders not inconsistent with the provisions of this Act, as the State Government may consider necessary for removing the difficulty.
11. The State Government may, by order published in the *Official Gazette*, add to, amend or alter any Scheduled.²⁴
12. (1) Every appointing authority shall maintain such records and documents²⁵ as may be prescribed by rules made in this behalf and shall furnish to the State Government in the prescribed manner. an annual report on the appointments made by it, during the previous **year reckoned according to the British calendar**.²⁶
- (2) Any officer authorised by the State Government in that behalf may inspect any records or documents, which are maintained in relation to appointments made by such appointing authority.
- (3) It shall be the duty of the appointing authority to produce such records or documents for inspection by the officer authorised under sub-section (2), and furnish such information or afford such assistance as may be necessary for him to carry out his functions under this Act.
- (4) Notwithstanding anything contained in **the West Bengal Services (Duties, Rights and Obligations of the Government Employees) Rules, 1980**,²⁷ any member of any Scheduled Castes or any Scheduled Tribes who is adversely affected on account of the non-compliance with the provisions of this Act or the rules made there under by any appointing authority, may bring the fact to the notice of the State Government and upon application made by him the State Government may call for such records or take such action thereon as it may think fit.
13. (1) The State Government may make rules for carrying out the purposes of. this Act.
- (2) In particular and without prejudice to the generality of the foregoing powers rules may provide for all or any of the following matters, namely,
- (a) form in which every establishment shall submit annual report to the State Government regarding the number of persons recruited in such establishment;
- (b) any other matter which has to be or may be prescribed by rules made in this behalf.

²⁴ Substituted Vide West Bengal Act XXIV of 2000 with immediate effect

²⁵ Ins. vide West Bengal Act XXIV of 2000 with immediate effect

²⁶ Words “financial year” subs. vide West Bengal Act XXIV of 2000 with immediate effect

²⁷ Subs. for “West Bengal Government Servants’ Conduct Rules, 1959” vide West Bengal Act XXIV of 2000 with immediate effect

***SCHEDULE I**
(See Section 4.).

The reservation for the members of the Scheduled Castes and the Scheduled Tribes in services or posts in an establishment shall be given effect to in the following manner, namely: --

** (i) A roster of one hundred vacancies¹ will be necessary to give effect to the reservation of vacancies for the Scheduled Castes and the Scheduled Tribes for direct recruitment.² The roster given below shall be adopted for the purpose by each establishment.

1 st vacancy	Scheduled Caste
2 nd vacancy	Unreserved
3 rd vacancy	Unreserved
4 th vacancy	Scheduled Tribe
5 th vacancy	Unreserved
6 th vacancy	Unreserved
7 th vacancy	Scheduled Caste
8 th vacancy	Unreserved
9 th vacancy	Unreserved
10 th vacancy	Unreserved
11 th vacancy	Scheduled Caste
12 th vacancy	Unreserved
13 th vacancy	Unreserved
14 th vacancy	Unreserved
15 th vacancy	Scheduled Caste
16 th vacancy	Unreserved
17 th vacancy	Unreserved
18 th vacancy	Scheduled Caste
19 th vacancy	Unreserved
20 th vacancy	Unreserved
21 st vacancy	Scheduled Caste
22 nd vacancy	Unreserved
23 rd vacancy	Unreserved
24 th vacancy	Scheduled Tribe
25 th vacancy	Unreserved
26 th vacancy	Unreserved
27 th vacancy	Unreserved
28 th vacancy	Scheduled Caste
29 th vacancy	Unreserved
30 th vacancy	Unreserved
31 st vacancy	Unreserved
32 nd vacancy	Scheduled Caste

* Substituted Vide West Bengal Act XXIV of 2000 with immediate effect

** Vide West Bengal Act XLII of 1994 w. e. f.16-1-1995

¹ Words "A roster of fifty vacancies" substituted vide West Bengal Act XXIV of 2000 with immediate effect

² Ins. vide West Bengal Act XXIV of 2000 with immediate effect.

33 rd vacancy	Unreserved
34 th vacancy	Unreserved
35 th vacancy	Unreserved
36 th vacancy	Scheduled Caste
37 th vacancy	Unreserved
38 th vacancy	Unreserved
39 th vacancy	Unreserved
40 th vacancy	Scheduled Caste
41 st vacancy	Unreserved
42 nd vacancy	Unreserved
43 rd vacancy	Scheduled Tribe
44 th vacancy	Unreserved
45 th vacancy	Unreserved
46 th vacancy	Unreserved
47 th vacancy	Scheduled Caste
48 th vacancy	Unreserved
49 th vacancy	Unreserved
* [50 th vacancy	Unreserved
51 st vacancy	Scheduled Caste
52 nd vacancy	Unreserved
53 rd vacancy	Unreserved
54 th vacancy	Scheduled Tribe
55 th vacancy	Unreserved
56 th vacancy	Unreserved
57 th vacancy	Scheduled Caste
58 th vacancy	Unreserved
59 th vacancy	Unreserved
60 th vacancy	Unreserved
61 st vacancy	Scheduled Caste
62 nd vacancy	Unreserved
63 rd vacancy	Unreserved
64 th vacancy	Unreserved
65 th vacancy	Scheduled Caste
66 th vacancy	Unreserved
67 th vacancy	Unreserved
68 th vacancy	Scheduled Caste
69 th vacancy	Unreserved
70 th vacancy	Unreserved
71 st vacancy	Scheduled Caste
72 nd vacancy	Unreserved
73 rd vacancy	Unreserved
74 th vacancy	Scheduled Tribe
75 th vacancy	Unreserved
76 th vacancy	Unreserved
77 th vacancy	Unreserved

* Subs for 50th vacancy vide West Bengal Act XXIV of 2000 with immediate effect.

78 th vacancy	Scheduled Caste
79 th vacancy	Unreserved
80 th vacancy	Unreserved
81 st vacancy	Unreserved
82 nd vacancy	Scheduled Caste
83 rd vacancy	Unreserved
84 th vacancy	Unreserved
85 th vacancy	Unreserved
86 th vacancy	Scheduled Caste
87 th vacancy	Unreserved
88 th vacancy	Unreserved
89 th vacancy	Unreserved
90 th vacancy	Scheduled Caste
91 st vacancy	Unreserved
92 nd vacancy	Unreserved
93 rd vacancy	Scheduled Tribe
94 th vacancy	Unreserved
95 th vacancy	Unreserved
96 th vacancy	Unreserved
97 th vacancy	Scheduled Caste
98 th vacancy	Unreserved
99 th vacancy	Unreserved
100 th vacancy	Unreserved]

- (ii) A register shall be maintained for giving effect to the instructions contained in paragraph (i).
- (iii) Before making an appointment by direct recruitment, the appointing authority shall ascertain by consulting the register whether the vacancy is reserved or unreserved and if it is reserved, for whom it is so reserved. Immediately after an appointment is made the particulars thereof shall be entered in the register and signed by the appointing authority.
- (iv) The roster is a running account from year to year and shall be maintained accordingly. If recruitment in a particular year stops at a particular point of the cycle, say at the 5th point, recruitment in the subsequent year shall begin at the next point, i.e., at the 6th point.
- ¹ (v) Omitted;
- ² (vi) Omitted;
- (vii) The roster shall be maintained separately for permanent and temporary vacancies.
- (viii) A vacancy due to whatever cause, except termination of service during probation, shall be treated as a fresh vacancy.
- ³ (ix) Omitted.

¹ Vide West Bengal Act XLII of 1994 w. e. f. 16-1-1995

² Vide West Bengal Act XLII of 1994 w. e. f. 16-1-1995

³ Vide West Bengal Act XV of 1996.

↑“**SCHEDULE II**
(See Section 5)

The reservation for the members of the Scheduled Castes and the Scheduled Tribes in vacancies to be filled up by promotion in an establishment shall be given effect to in the following manner, namely:--

- (i) A roster of fifty vacancies will be necessary to give effect to the reservation for the members of the Scheduled Castes and the Scheduled Tribes in vacancies to be filled up. The roster given below shall be adopted for the purpose by each establishment.

1 st vacancy	Scheduled Caste
2 nd vacancy	Unreserved
3 rd vacancy	Unreserved
4 th vacancy	Scheduled Tribe
5 th vacancy	Unreserved
6 th vacancy	Unreserved
7 th vacancy	Scheduled Caste
8 th vacancy	Unreserved
9 th vacancy	Unreserved
10 th vacancy	Unreserved
11 th vacancy	Scheduled Caste
12 th vacancy	Unreserved
13 th vacancy	Unreserved
14 th vacancy	Unreserved
15 th vacancy	Scheduled Caste
16 th vacancy	Unreserved
17 th vacancy	Unreserved
18 th vacancy	Scheduled Caste
19 th vacancy	Unreserved
20 th vacancy	Unreserved
21 st vacancy	Scheduled Caste
22 nd vacancy	Unreserved
23 rd vacancy	Unreserved
24 th vacancy	Scheduled Tribe
25 th vacancy	Unreserved
26 th vacancy	Unreserved
27 th vacancy	Unreserved
28 th vacancy	Scheduled Caste
29 th vacancy	Unreserved
30 th vacancy	Unreserved
31 st vacancy	Unreserved

↑ Inserted vide Act XXIV of 2000 with immediate effect

32 nd vacancy	Scheduled Caste
33 rd vacancy	Unreserved
34 th vacancy	Unreserved
35 th vacancy	Unreserved
36 th vacancy	Scheduled Caste
37 th vacancy	Unreserved
38 th vacancy	Unreserved
39 th vacancy	Unreserved
40 th vacancy	Scheduled Caste
41 st vacancy	Unreserved
42 nd vacancy	Unreserved
43 rd vacancy	Scheduled Tribe
44 th vacancy	Unreserved
45 th vacancy	Unreserved
46 th vacancy	Unreserved
47 th vacancy	Scheduled Caste
48 th vacancy	Unreserved
49 th vacancy	Unreserved
50 th vacancy	Unreserved

- (ii) A register shall be maintained for giving effect to the instructions contained in paragraph (i).
- (iii) Before giving any promotion, the appointing authority shall ascertain by consulting the register whether the vacancy is reserved or unreserved and if it is reserved, for whom it is so reserved. Immediately after a promotion is given, the particulars thereof shall be entered in the register and signed by the appointing authority.
- (iv) The roster is a running account from year to year and shall be maintained accordingly. If promotion in a particular year stops at a particular point of the cycle, say, at the 5th point, promotion in the subsequent year shall begin at the next point, that is, at the 6th point.
- (v) The roster shall be maintained separately for permanent and temporary vacancies.
- (vi) A vacancy due to whatever cause, except termination of service during probation, shall be treated as a fresh vacancy.”

(b) RESERVATION RULES

GOVT. OF WEST BENGAL
Scheduled Castes and Tribes Welfare Department

NOTIFICATION

No.374-TW/EC,--16th August, 1976,--In exercise of the power conferred by section 13 of the West Bengal Scheduled Castes and Scheduled Tribes (Reservation of vacancies in Services and Posts) Act,1976 (West Bengal Act XXVII of 1976), the Governor is pleased hereby to make the following rules, namely:--

RULES

CHAPTER I

Preliminary.

1. These Rules may be called the West Bengal Scheduled Castes and Scheduled Tribes **Short title.** (Reservation of Vacancies in Services and Posts) Rules, 1976.
2. In these rules, --
 - (a) "Act" means the West Bengal Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1976;
 - Definition** (b) "Department administering the Act" means the Department of Scheduled Castes and Scheduled Tribes Welfare of the Govt. Of West Bengal;
 - (c) "Section" means a section of the Act.

CHAPTER II

Maintenance of register of appointments, submission of annual report and maintenance of liaison with administrative department.

3. Every appointing authority shall maintain the register as referred to in paragraph (ii) of the **Maintenance of register of appointments** Schedule to the Act in the form indicated in Appendix I separately in respect of cases of direct recruitment and promotion.
4. For the purposes of sub-section (1) of section 12, the annual report on the appointments made by every appointing authority shall be furnished in the following manner and in the forms indicated hereunder, namely: --

Submission of annual report. (a) As soon after the first of January of every year as possible and latest by the first day of March, each appointing authority shall send to the respective administrative department or head of office concerned,--

(i) statement in the form given in Appendix II showing the total number of employees and the number of Scheduled Castes and Scheduled Tribes amongst them as on the 1st January of the year;

(ii) statements in the forms given in Appendix IIIA and Appendix IIIB showing the particulars of recruitments made during the calendar year and the numbers filled by the Scheduled Castes and Scheduled Tribes.

a. The Administrative head of each establishment shall send to the department of Government administering the Act,--

(i) a consolidated statement in the form given in Appendix II in respect of all offices under his control including his own, and

(ii) consolidated statements in forms given in Appendix IIIA and Appendix IIIB in respect of all offices under his control including his own.

Classification of services. 5. For the purposes of submission of reports referred to in rule 4, classification of services in different establishments should be as laid down in rule. 4 and rule 5 of the West Bengal Services (Classification, Control and Appeal) Rules, 1971.

Appointment of Liaison Officer. 6. (a) In every department under the State Government, the Deputy Secretary in charge of administration and in other establishments, the senior officer-in-charge of establishment matters and appointments shall act as the Liaison Officer for the purpose of implementation of the provisions of the Act in all establishments and services under his administrative control.

(b). Every head of the department or head of office shall intimate the name and designation of the Liaison Officer in respect of his establishment to the department administering the Act:

Provided that the head of the department or head of office shall intimate to the department administering the Act, any change in the name or designation of the Liaison Officer within a month of such change.

(c) The Liaison Officer shall be responsible for ensuring—

Function of Liaison Officer (i) due compliance by the subordinate appointing authorities, if any, of the provisions of the Act;

- (ii) submission of the annual report as required under the rules by each appointing authority;
- (iii) scrutiny and consolidation of the annual statements in respect of all offices and services in and under the establishment and timely submission of the consolidated statement to the concerned authority;
- (iv) regular inspection of the roster and registers maintained in his own office as well as in offices under the control of the establishment;
- (i) maintenance of proper liaison with the authority administering the Act in all matters concerning the implementation of the Act.

CHAPTER III

Inspection of records and documents.

- * 7. For the purposes of sub-section (2) of section 12, the following officers shall be theofficers authorised by the State Government who may inspect any records or documents which are maintained in relation to appointments made by the appointing authorities within the meaning of the Act in offices located in the areas mentioned against each, namely:

Officers authorised to inspect records and documents.

<i>Designation of Officer</i>	<i>Area</i>
(i) Joint Commissioner for Reservation, West Bengal	Whole of West Bengal
(ii) Assistant Commissioner for Reservation, West Bengal	Whole of West Bengal
(iii) Officer on Special Duty (Reservation Cell)	Whole of West Bengal

* Vide Notification No. 1177-TW/EC/MR-70/92, dt. 01.12.1995.

<i>Designation of Officer</i>	<i>Area</i>
(iv) Any Officer not below the rank of Assistant Secretary to Government Specially appointed by the State Government in this behalf	Whole of West Bengal
(v) District Commissioner for Reservation	Within his territorial jurisdiction
(vi) Project Officer-cum-District Welfare Officer, Scheduled Castes and Tribes Welfare	Within his territorial jurisdiction
(vii) Additional District Welfare Officer, Scheduled Castes and Tribes Welfare	Within his territorial jurisdiction
(viii) District Welfare Officer, Scheduled Castes and Tribes Welfare	Within his territorial jurisdiction
(ix) Inspector, Scheduled Castes & Tribes Welfare	Within his territorial jurisdiction.

Explanation.—“Territorial jurisdiction” shall have the same meaning as in section 6C.

Officers competent to issue Scheduled Castes or Scheduled Tribes Certificates. 8. Omit.

Form for Certificate. 9. Omit.

**Reservation for Scheduled Castes and Scheduled Tribes
in vacancies to be filled by promotion.**

1. While filling up vacancies reserved for Scheduled Castes and Scheduled Tribes by promotion,

the following procedure shall be followed, namely: --

**Procedure
for filling up
of reserved
vacancies by
promotion.**

- (a) Selection against vacancies reserved for Scheduled Castes and Scheduled Tribes shall be made from among those Scheduled Caste and Scheduled Tribe employees who fall within the normal zone of consideration.

[↑] “Explanation. —Normal zone of consideration in respect of promotion to any particular post or posts shall consist of such of the employees eligible for promotion to such post or posts according to the prevailing recruitment rules or procedure as occupy, when arranged in descending order of the seniority, five times the number of vacancy or vacancies actually available for filling up by promotion at the time of consideration.”;

(b) If candidates from Scheduled Castes and Scheduled Tribes obtain on the basis of merit with due regard to seniority, on the same basis as other candidates, less number of vacancies than that reserved for them, the difference shall be made up by selecting candidates irrespective of merit but who are considered fit for promotion:

“Provided that for the purpose of fitness, all Scheduled Caste and Scheduled Tribe employees who are within the normal zone of consideration for promotion to higher posts shall be given one grading higher than the grading assigned to them on the basis of their record of service excepting in those cases where the highest grading has been assigned on the basis of record of service.”.

(c) In the absence of a qualified Scheduled Caste or Scheduled Tribe candidate against a particular reserved vacancy, the reserved vacancy shall be carried forward till the next reserved vacancy occurs in the fifty-point roster but not beyond.

(d) While vacancies reserved for Scheduled Castes and Scheduled Tribes will continue to be reserved for the respective community only, a Scheduled Caste employee may also be considered for appointment against a vacancy reserved for Scheduled Tribes, or vice-versa, where the appropriate reserved vacancy could not be filled by a Scheduled Tribe or a Scheduled Caste candidate, as the case may be.

[↑] Vide Notification No. 48-TW/EC, dated 10.03.1980.
Vide Notification No. 1253-TW/EC, dated 21.12.1995.

***APPENDIX I**

Register of Appointment

DIRECT RECRUITMENT/PROMOTION

Name of the Department:

Group of Service:

Scale of Pay:

Name of office:

Name of the Post:

Total No. of Sanctioned Posts:

Percentage of Reservation

(a) Scheduled Castes:

(b) Scheduled Tribes:

Date of occurrence of the vacancy	Point of roster	Whether reserved for Scheduled Castes or Scheduled Tribes.	Name of the candidate appointed indicating Scheduled Caste or Scheduled Tribe status	Date of appointment	If the candidate of the right community is not appointed to the reserved vacancy, reasons for not doing so	Remarks	Signature of the appointing authority.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

***APPENDIX II**

Annual Statement of the total number of employees and members of Scheduled Castes/Scheduled Tribes amongst them as stood on the 1st January of the year 19....

Name of the Department:

Name and address of the Office:

Group of Service	Name of Post	Total number of employees in the posts	Number of Scheduled Castes amongst them	Percentage of Scheduled Castes to the total employees in the post	Number of Scheduled Tribes amongst them	Percentage of Scheduled Tribes to the total employees in the post

* Vide Notification No. 1177-TW/EC/MR-70/92, dated 01.12.1995.

***APPENDIX IIIA**

Annual Return of Appointments made during the calendar year ending on 31st December, 19...

Name of the Department:

Name and address of the Office:

DIRECT RECRUITMENT

Group of Service	Name of Post	Total number of vacancies occurred			No. of vacancies reported to PSC/EE			No. of vacancies filled up by			No. of dereserved vacancies in relation to Column 4		No. of vacancies carried forwarded on account of Dereservation	R E M A R K S
		General	S.C.	S.T.	General	S.C.	ST	General	S.C.	ST	S.C.	S.T.		
(1)	(2)	(3)			(4)			(5)			(6)		(7)	(8)

***APPENDIX IIIB**

Annual Return of Appointments made during the calendar year ending on the 31st December, 19...

Name of the Department:

Name and Address of the Office:

PROMOTION

Group of Service	Name of Post	Total number of vacancies occurred			Total number of vacancies filled up			Total number of reserved vacancies carried forward		Total number of reserved vacancies lapsed		R E M A R K S
		General	S.C.	S.T.	General	S.C.	S.T.	S.C.	S.T.	S.C.	S.T.	
(1)	(2)	(3)			(4)			(5)		(6)		(7)

* Vide Notification No. 1177-TW/EC/MR-70/92, dated 01.12.1995.

* Vide Notification No. 1177-TW/EC/MR-70/92, dated 01.12.1995.

NOTIFICATION

No. 375-TW/EC.—16th August, 1976.—In exercise of the powers conferred by the first proviso to sub-section (a) of section 4 read with section 10 of the West Bengal Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Act, 1976 (West Bengal Act XXVII of 1976) the Governor is pleased hereby to direct that subject to the availability of qualified candidates in appointments to be made in any office of the state Government, other than appointments in West Bengal Civil Service (Judicial), twenty-five per cent of the vacancies shall be reserved for candidate belonging to the Scheduled Castes and ten per cent for candidates belonging to the Scheduled Tribes provided that the candidates possess the minimum prescribed qualifying marks in any test or examination and subject further to the condition that—

- (i) the enhanced percentage will be applicable only if the total number of Scheduled Caste or Scheduled Tribe employees in any service or cadre is less than fifteen per cent and five per cent respectively of the total number of employees in that service or cadre recruited direct since the year 1972, and
- (ii) the enhanced percentage will cease to be effective as soon the prescribed percentage of reservation in respect of Scheduled Castes and Scheduled Tribes at fifteen per cent and five per cent respectively is attained in respect of any service or cadre.

2. The Governor is also pleased to direct that for the purpose of implementation of the enhanced percentages of reservation laid down hereinbefore the following roster of twenty vacancies shall be adopted, namely:--

1 st vacancy	Scheduled Caste
2 nd vacancy	Unreserved
3 rd vacancy	Scheduled Tribe
4 th vacancy	Unreserved
5 th vacancy	Unreserved
6 th vacancy	Scheduled Caste
7 th vacancy	Unreserved
8 th vacancy	Unreserved
9 th vacancy	Scheduled Caste
10 th vacancy	Unreserved
11 th vacancy	Unreserved
12 th vacancy	Scheduled Tribe
13 th vacancy	Unreserved
14 th vacancy	Unreserved
15 th vacancy	Scheduled Caste
16 th vacancy	Unreserved
17 th vacancy	Unreserved
18 th vacancy	Scheduled Caste
19 th vacancy	Unreserved
20 th vacancy	Unreserved

3. The Governor is further pleased to direct that for the purpose of implementations of reservation of ten per cent and five per cent of vacancies for the Scheduled Castes and Scheduled Tribes respectively in respect of the West Bengal Civil Service (Judicial) the following roster of twenty vacancies shall be adopted, namely:--

1 st vacancy	Unreserved
2 nd vacancy	Unreserved
3 rd vacancy	Scheduled Caste
4 th vacancy	Unreserved
5 th vacancy	Unreserved
6 th vacancy	Unreserved
7 th vacancy	Unreserved
8 th vacancy	Scheduled Tribe
9 th vacancy	Unreserved
10 th vacancy	Unreserved
11 th vacancy	Unreserved
12 th vacancy	Unreserved
13 th vacancy	Unreserved
14 th vacancy	Unreserved
15 th vacancy	Scheduled Caste
16 th vacancy	Unreserved
17 th vacancy	Unreserved
18 th vacancy	Unreserved
19 th vacancy	Unreserved
20 th vacancy	Unreserved

By order of the Governor,
G .S. BANERJEE,
Secy. to the Govt. of West Bengal.

LIST OF SCHEDULED CASTES AND SCHEDULED TRIBES
IN WEST BENGAL

Scheduled Castes

1. Bagdi, Duley	32. Keot, Keyot
2. Bahelia	33. Khaira
3. Baiti	34. Khatik
4. Bantar	35. Koch
5. Bauri	36. Konai
6. Beldar	37. Konwar
7. Bhogta	38. Kotal
8. Bhumali	39. Kurariar
9. Bhuiya	40. Lalbegi
10. Bind	41. Lohar
11. Chamar, Charmakar, Mochi, Muchi, Rabidas, Ruidas, Rishi	42. Mahar
12. Chaupal	43. Mal
13. Dabgar	44. Mallah
14. Damai (Nepali)	45. Musahar
15. Dhoba, Dhobi	46. Namasudra
16. Doai	47. Nat
17. Dom, Dhangad	48. Nuniya
18. Dosadh, Dusadh, Dhari, Dharhi	49. Paliya
19. Ghasi	50. Pan, Sawasi
20. Gonrhi	51. Pasi
21. Halalkhor	52. Patni
22. Hari, Mehtar, Methor, Bhangi	53. Pod, Poundra
23. Jalia Kaibarta	54. Rajbanshi
24. Jhalo Malo, Malo	55. Rajwar
25. Kadar	56. Sarki (Nepali)
26. Kami (Nepali)	57. Sunri (Excluding Saha)
27. Kandra	58. Tiyar
28. Kanjar	59. Turi
29. Kaora	
30. Karenga, Koranga	
31. Kaur	

Scheduled Tribes

1. Asur	8. Birjia
2. Baiga	9. Chakma
3. Bedia, Bediya	10. Chero
4. Bhumij	11. Chik Baraik
5. Bhutia, Sherpa, Toto, Dukpa, Kagatay, Tibetan, Yolmo	12. Garo
6. Birhor	13. Gond
	14. Gorait
	15. Hajang

15. Ho	27. Mahli
16. Karmali	28. Mal Pahariya
17. Kharwar	29. Mech
18. Khond	30. Mru
19. Kisan	31. Munda
20. Kora	32. Nagesia
21. Korwa	33. Oraon
22. Lepcha	34. Parhaiya
23. Lodha, Kheria, Kharia	35. Rabha
24. Lohara, Lohra	36. Santal
25. Magh	37. Sauria Paharia
26. Mahali	38. Savar

Law Department u/o reference No. 441 of 1996

As Maxwell says, ‘In ordinary usage, “may” is permissive *** and, in accordance with such usage, the word “may” in a statute will not generally be held to be mandatory. In some cases, however, it has been held that expressions such as “may”, *** *** have – to say the least – a compulsory force, and so their meaning has been modified by judicial exposition.’ *Vide Maxwell* on the Interpretation of statutes, Twelfth Edition, page 234.

2. From the following extract from Craies on Statute Law, Sixth Edition, pp. 229-230, it will appear in the words of Craies, that ‘The meaning of these words “shall” and “may” in a statute conferring a power is the subject of constant and conflicting interpretation. “ ‘May’ does not mean ‘must’; ‘may’ always means ‘may’. ‘May’ is a permissive or enabling expression but there are cases in which for various reasons as soon as the person who is within the statute is entrusted with the power, it becomes his duty to exercise it.”

3. Craies further says as follows :-

“May” and *** import a discretion

Statutes passed for the purpose of enabling something to be done are usually expressed in permissive language, that is to say, it is enacted that *** “such and such a thing *may* be done.” “Prima facie, these words import a discretion, and they must be construed as discretionary unless there be anything in the subject-matter to which they are applied, or in any other part of the statute, to show that they are meant to be imperative.”

Craies also says—

“May” sometimes equivalent to “shall”

It is, however, a well-recognised canon of construction, as Lord Cairns said in *Julius v Bishop of Oxford*, that “where a power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out, and with regard to whom a definition is supplied by the legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised and the court will require it to be exercised.” And Lord Blackburn said: “The enabling words are construed as compulsory whenever the object of the power is to effectuate a legal right.” In *R. v Bishop of Oxford*, “so long ago as the year 1693, it

was decided in the case of *R. v Barlow*, that when a statute authorises the doing a thing for the sake of justice or the public good, the word 'may' means 'shall', and that rule has been acted upon to the present time.....***'. *Vide page 285, ibid.*

4 It will also appear from the book titled as *Legislative Drafting and Forms* by Sir Alison Russel, K.C., Fourth Edition, page 108, that 'The Courts frequently construe such words as "may". *** as placing a duty on those on whom the faculty or power is placed by a statute of exercising it.'

5. In view of the interpretations as aforesaid, this Department is inclined to observe that the words "may also be considered" in clause (d) of rule 10 of the West Bengal Scheduled Castes and Scheduled Tribes (Reservation of Vacancies in Services and Posts) Rules, 1976, are meant to be imperative.

6. The Administrative Department may be informed accordingly.

Sd/- **S. MAITRA,**
18.10.96