

ITEM NO.28

COURT NO.1

SECTION III-A

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No.1867/2006

MALIK MAZHAR SULTAN & ANR.

Appellant(s)

VERSUS

U.P. PUBLIC SERVICE COMMISSION THROUGH  
ITS SECRETARY & ORS.

Respondent(s)

(With appln.(s) for appropriate orders/directions, clarification/  
direction and extension of time)

WITH S.M.W.(C) No.1/2017 (PIL-W)  
S.M.W.(C) No.2/2018 (PIL-W)

Date : 07-11-2019/ These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE DEEPAK GUPTA  
HON'BLE MR. JUSTICE SANJIV KHANNA

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UPON hearing the counsel the Court made the following  
O R D E R

Re: State of Gujarat (High Court of Gujarat)

We have heard Shri K.V. Viswanathan, learned Amicus



Curiae. Mr. Hasmukhbhai Dalsukhibhai Suthar, Registrar General is present on behalf of the High Court of Gujarat

I. District Judge/Higher Judicial Service

So far as the filling up of 51 vacancies in the cadre of District Judge is concerned, we have been informed by the learned counsel that the proposal is to be placed before the Chief Justice of the High Court for appropriate orders after the court reopens after Diwali vacation i.e. 11.11.2019. The Hon'ble Chief Justice of the High Court is requested to look into the matter and expedite the process.

II. Civil Judge

In the selection held for 124 posts notified on 1<sup>st</sup> January, 2019, in the cadre of Civil Judge, though nearly five thousand candidates had applied, only seven were found suitable for appointment. The left over vacancies to be filled up along with further vacancies that has occurred totaling 186 have been notified and preliminary examination is scheduled to be held on 17.11.2019. We would request the High Court to make a realistic assessment of the actual requirement of judicial officers and, if required, prune the number of posts available in the cadre to meet the actual requirements so that the recruitment process in the future is conducted on more realistic basis. For the present, we direct that 185 vacancies advertised for which preliminary examination is scheduled to be held on 17.11.2019, be completed as per the time schedule laid down in *Malik Mazhar Sultan Case*.

So far as the infrastructure is concerned, we are told by the learned Amicus Curiae that 17 court buildings are at different stages of construction and are required to be

completed at the earliest. We direct the State Government to do so. The time frame for making available infrastructure as indicated in the note of the learned Amicus Curiae be adhered to.

Re: State of Himachal Pradesh (High Court of H.P.)

Mr. Virender Singh, Registrar General is present on behalf of the High Court of Himachal Pradesh.

I. District Judge/Higher Judicial Service

So far as the vacancies in the cadre of District Judge is concerned, against 3 notified vacancies 8 candidates have been included in the select list. All the 8 selected candidates are judicial officers whose eligibility to take part in the selection is subject matter of consideration in a pending proceeding before the High Court. On being directed, the Registrar General of the High Court has informed that 1 out of 2 judicial officers is occupying a slot in the first 3 names of the select list. In these circumstances, we direct that 2 out of first 3 names in the select list may be considered for appointment, if otherwise eligible and one post be kept vacant to abide by the order of the High Court in the case of eligibility of judicial officers to take part in the direct recruitment to the post of District Judge. Consequential actions will be expedited and taken within an outer limit of four weeks from today by all concerned.

II. Civil Judge (Junior Division)

So far as the vacancies in the cadre of Civil Judge (Junior Division) is concerned, we direct that the appointments against 10 notified posts be completed by the end of December, 2019, as undertaken before us.

I.A. No.127623 of 2019 is disposed of in the above terms.

So far as the infrastructure is concerned, we are told by the learned Amicus Curiae that on the orders of the Court, a report has been submitted to him by the learned Registrar General of the High Court which has been forwarded by learned Amicus Curiae to the Registry of this Court to be placed before the Court under a covering letter of Amicus Curiae. A copy of the said report be furnished to the learned counsel appearing for the State. The State is directed to ensure that requisite steps are taken so far as the availability of infrastructure is concerned within the time schedule as mentioned in the said report.

Re: State of Jammu & Kashmir (High Court of J&K)

We have heard Mr. K.V. Viswanathan, learned Amicus Curiae, Mr. Gaurav Pachnanda, learned senior counsel for the High Court of Jammu & Kashmir, Mr. M. Shoeb Alam, learned counsel for the State and Mr. Sanjay Dhar, Registrar General of the High Court.

I. District Judge/Higher Judicial Service

By our previous order dated 30.07.2019/31.07/2019/01.087.2019, we had directed completion of process of selection and appointment in different cadre of judicial services in the State of Jammu & Kashmir on different dates as mentioned in the said order.

An interlocutory application has been filed on behalf of the High Court seeking extension of time on the ground that the present situation in the State of Jammu & Kashmir does not permit completion of the process within the time line framed by this Court.

Having regard to the above, we extend the time for completion of process for recruitment, selection or appointment to different cadres of the judicial services of the State by a period of four months from today.

II. Civil Judge (Junior Division)

Against 42 vacancies in the cadre of Civil Judge (Junior Division)/Munsiff, 41 candidates have been selected by the Public Service Commission and the select list has been forwarded to the State Government, which is stated to be under process. Mr. M. Shoeb Alam, learned counsel appearing for the State undertakes that the appointment of candidates from the select list of 41, as may be found suitable, will be made by the end of November, 2019. The State is directed to do so.

Re: State of Jharkhand (High Court of Jharkhand)

Mr. Ambuj Nath, Registrar General is present on behalf of the High Court of Jharkhand.

I. District Judge/Higher Judicial Service

Insofar as the vacancies in the cadre of District Judge is concerned, we are told that after appointments by promotion of 59 eligible officers, selection process for direct recruitment against 20 vacancies was undertaken and 17 candidates have been included in the select list, out of which 15 have been appointed. 2 appointments have not been made as the selected candidates are judicial officers working in other States and the eligibility of judicial officers to take part in the examination for direct recruitment is pending before this Court.

The interlocutory applications (I.A. No.139035 and 139131 of 2019) have been filed by one such judicial officers, who contends that on the date of application, he was not a judicial officer though thereafter he opted to join Bihar judicial service. The question whether eligibility is to be reckoned with the date of appointment or date of application, is pending before a three-Judge Bench of this Court. The matter is likely to take some time. The applicant in the interlocutory application admittedly was not a judicial officer on the date of appointment. We, therefore, permit him to opt to join against one of the posts of District Judge in the judicial service of Jharkhand State, subject to eligibility, etc., while making it clear that such an appointment if it materializes, will be subject to the results of the proceedings pending before this Court in *Durgesh Mor vs. Hon'ble High Court of Delhi* (2018) 4 SCC 619.

## II. Civil Judge (Senior Division)

So far as the vacancies in the cadre of Civil Judge (Senior Division) is concerned, we are told by the Registrar General of the High Court that 42 posts have been filled up by promotion and the remaining vacancies are at different stages awaiting receipt and consideration of various reports, like vigilance report, etc.

In view of the above, no further orders will be called for.

## III. Civil Judge (Junior Division)

So far as the vacancies in the cadre of Civil Judge (Junior Division) is concerned, 107 posts have been advertised and the result of the main written examination is

scheduled to be declared by the second week of November, 2019. The High Court shall finalize the remaining part of the selection process as per the time schedule laid down by this Court in *Malik Mazhar Sultan* case and, thereafter, such of the eligible candidates who may be included in the select list shall be appointed by the State Government without any delay.

(Chetan Kumar)  
A.R. -cum-P.S.

(Anand Prakash)  
Court Master