

ITEM NO.301

COURT NO.1

SECTION XI

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(s). 1867 of 2006

MALIK MAZHAR SULTAN AND ANR.

Appellant(s)

VERSUS

U.P. PUBLIC SERVICE COMMISSION & ORS

Respondent(s)

(With appln. (s) for c/delay in filing affidavit, clarification of court's order, condonation of delay in filing appeal, directions, exemption from filing O.T., impleadment, intervention, modification/clarification permission to file additional documents, permission to implead the name of applicant, may refer to remarks and office report)

WITH

W.P.(C) No. 403/2014

(With appln.(s) for vacation of status quo, impleadment as party respondent and Office Report)

W.P.(C) No. 85/2015

(With appln.(s) for directions and Office Report)

Date : 28/04/2015 These matters were called
 on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN MISHRA

Amicus Curiae

Mr. Vijay Hansaria, Sr. Adv.
Ms. Sneha Kalita, Adv.
Mr. Avnish Pandey, Adv.

For Appellant(s)

Mr. Ejaz Maqbool, Adv.

Mr. Debasis Misra, Adv.

Ms. T. Anamika, Adv.

Mr. B.V. Chandan, Adv.

Mr. M. P. Shorawala, Adv.

For Respondent(s)

Karnataka

Mr. V. N. Raghupathy, Adv.

Gujarat	Ms. Hemantika Wahi, Adv. Ms. Jesal, Adv. Ms. Vinakshi Kadam, Adv.
Allahabad H/Ct	Mr. Ashok K. Srivastava, Adv.
U.P.	Mr. Irshad Ahmad, AAG Mr. Abhishth Kumar, Adv. Ms. Archana Singh, Adv.
Patna H/Ct.	Mr. Pravin H. Parekh, Sr. Adv. Mr. Kumar Shashank, Adv. Mr. Kshatrashal Raj, Adv. Mr. Vishal Prasad, Adv. Mr. Abhishek Vinod Deshmukh, Adv. For M/s. Parekh & Co.
Bihar	Mr. Manish Kumar, Adv.
Rajasthan H/Ct.	Mr. Sunil K. Jain, Adv. Mr. Pawanshree Agarwal, Adv. Mr. Kaushik Choudhury, Adv.
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Rajasthan	Mr. S.S. Shamsbery, Adv. Mr. Amit Sharma, Adv. Mr. Sandeep Singh, Adv. Ms. Ruchi Kohli, Adv.
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Ms. Gunwant Dara, Adv.
 Ms. Sadhna Sandhu, Adv.
 Mr. D. S. Mahra, Adv.

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Mr. V. G. Pragasam, Adv.
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Mr. Ranjan Mukherjee, Adv.

Ms. S. Janani, Adv.

Mr. Annam D. N. Rao, Adv.
 Ms. Neelam Jain, Adv.

H.P.

Mr. Suryanarayana Singh, AAG
 Mr. Pragati Neekhara, Adv.

Manipur

Mr. Sapam Biswajit Meitei, Adv.
 Mr. Z.H. Isaac Haiding, Adv.
 Mr. Ashok Kumar Singh, Adv.

Mrs. D. Bharathi Reddy, Adv.

Jharkhand H/Ct.

Mr. Krishnanand Pandeya, Adv.
 Mr. Amrendra Kr. Choubey, Adv.

BPSL

Mr. Navin Prakash, Adv.

West Bengal

Mr. Anip Sachthey, Adv.
 Mr. Mohit Paul, Adv.
 Ms. Saakaar Sardana, Adv.

Arunachal Pradesh

Mr. Anil Shrivastav, Adv.
 Mr. Ritu Raj, Adv.

Jharkhand

Mr. Anil K. Jha, Adv.
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Tripura

Mr. Gopal Singh, Adv.
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 Ms. Rashmi Srivastava, Adv.

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Mr. K.V. Jagdishvaran, Adv.
 Ms. G. Indira, Adv.

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Ms. K. Enatoli Sema, Adv.
 Mr. Amit Kumar Singh, Adv.

Mr. Sravan Kumar K. Adv.
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Ms. A. Subhashini, Adv.

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Ms. Asha Jain Madan, Adv.

Mr. Ashok Mathur, Adv.

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Ms. Bina Gupta, Adv.

Mr. Bharat Sangal, Adv.

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Mr. G. S. Chatterjee, Adv.

Mr. G. Prakash, Adv.

Mr. K. K. Mohan, Adv.

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Mr. Anuvrat Sharma,Adv.
Mr. Balaji Srinivasan,Adv.
Mr. Milind Kumar,Adv.
Mr. Ajay Pal,Adv.
Mr. Merusagar Samantaray,Adv.
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Mr. Kaushal Yadav,Adv.
Mr. Ashok Panigrahi,Adv.
Mr. Ranjan Dwivedi,Adv.
Ms. T. Kanaka Durga,Adv.
Mr. E. C. Vidya Sagar,Adv.
Mr. Mushtaq Ahmad,Adv.
Mr. C. S. N. Mohan Rao,Adv.
Mr. Amit Kumar,Adv.
Mr. Dharmendra Kumar Sinha,Adv.

Mr. Anil Kumar, Adv.

Mr. Nishe Rajen Shonker, Adv.

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

With regard to Karnataka

Pursuant to the directions issued by us on 31.03.2015, the Registrar General of the High Court of Karnataka, Shri B.A. Patil, is present before us and has also filed an affidavit.

Shri Vijay Hansaria, learned *Amicus Curiae*, has filed a Memo. In that, he has stated that the High Court had issued an advertisement to fill up 17 vacancies of the District Judges (Direct Recruitment), dated 17.11.2012. The examinations were conducted to fill up the aforesaid vacancies only on 11.12.2014 and the evaluation of the papers was completed only on 03.01.2015.

It is further stated that in the said examinations only five candidates had passed and the matter was brought before the Full Court of the High Court for approval and issuance of letters of appointment to the selected candidates.

The learned *Amicus Curiae* also states that in the Full Court meeting no decision could be

taken and the matter was adjourned. That shows that the High Court had not taken serious steps to fill up the vacancies which they had advertised way back in November, 2012.

The action of the High Court, in our considered view, is contrary to what has been stated and observed by this Court in the decision i.e. "*Malik Mazhar Sultan (3) & Another. vs. Uttar Pradesh Public Service Commission & Others*, reported in (2008) 17 SCC 703".

In the said decision this Court, insofar as the direct recruitment of District Judges is concerned, has specifically observed that advertisement shall be issued by 15th of April every year and the final select list must be published by 15th September of that year, i.e., within five months.

In the instant case, as we have already stated, in spite of lapse of nearly 29 months, the High Court has done nothing in the matter except issuing an advertisement, holding an examination and selecting candidates, but without even requesting the State Government to issue letters of appointment to those selected candidates.

The High Court has not even initiated the selection process to fill up the vacancies for the year 2013-2014.

The same situation continues even in the case of the recruitment and filling up of the vacancies of Civil Judge (Direct Recruitment/Promotion) Senior Division and Junior Division.

In our view, the attitude of the High Court appears to be contrary to what has been said by this Court. We do not approve the *snail's pace* at which the High Court has acted in filling up the vacancies insofar as the District Judges (Direct Recruitment) are concerned.

If High Courts do not comply with the request made by this Court, by a judicial order, we do not know whether an ordinary citizen would think of complying with the orders and directions issued by this Court. In our considered view, the High Court should take a serious note of the request made by this Court and comply it within the time frame that this Court has fixed. This would be beneficial for this institution as well as for the High Courts.

We do not intend to say anything more than

this. We hope and expect the High Court to seriously consider the observations made by this Court in the aforementioned reported decision and comply with the same as early as possible. If needed, the High Court should not hesitate to change the Registrar General and bring in a Registrar General, who can really help and assist the High Court in complying with the orders issued by this Court from time to time.

By this Court's order dated 13.11.2014, we directed the State Government to consider and pass appropriate orders, insofar as the reservation in the cadre of Civil Judge (Junior Division) is concerned. The learned *Amicus* inform us that so far the State Government has done nothing in the matter.

This, in our considered opinion, is nothing but a deliberate and wilful disobedience of the orders and directions issued by this Court. If we do not get an appropriate reply/affidavit from the State Government, we will not hesitate to initiate appropriate contempt proceedings against the concerned officers/authorities.

Call the matter after eight weeks.

The Registrar General/Registrar of the High Court of Karnataka shall remain present on the next date of hearing.

With regard to Gujarat

Pursuant to the directions issued by us, the Registrar General of the High Court of Gujarat, Shri B.N. Karia and Registrar (Recruitments), Shri V.K. Vyas, are present before us.

Smt. Hemantika Wahi, learned counsel appearing for the State of Gujarat as well as for the High Court, states that the High Court as well as the State have taken the effective steps to fill up the vacancies of the District Judges (Direct Recruitment), Promotions to the District Judges cadre, Civil Judges (Senior Division) and Civil Judges (Junior Division).

The learned counsel for the State as well as for the High Court, on instructions, states that the entire selection process including issuance of letters of appointment will be completed on or before 31.07.2015.

In our opinion, the High Court of Gujarat is taking effective steps to fill up the vacancies.

Therefore, for the present, we do not intend to issue any further direction. We only place on record the submission made by Smt. Wahi, learned counsel for the State as well for the High Court.

The presence of the Registrar General/ Registrar is dispensed with for the present.

An appropriate affidavit shall be filed by the High Court immediately after the issuance of letters of appointment to the candidates selected for District Judges (Senior Division) and Civil Judges (Junior Division), within twelve weeks' time from today.

Call after 31.07.2015.

With regard to Uttar Pradesh

Pursuant to the directions issued by us, Shri Ram Krishna Upadhyay, Registrar (Selection & Appointments) is present before us.

We have perused the memo filed by Shri Vijay Hansaria, learned *Amicus Curiae*, insofar as the State of Uttar Pradesh is concerned.

In our view, the performance of the High Court, in filling up the vacancies, appears to be satisfactory. We only wish to remind them, once

again, of the time schedule fixed by this Court for filling up of vacancies of District Judges (Direct recruitment/by way of promotion etc.) in the case of "*Malik Mazhar Sultan (3) & Another. vs. Uttar Pradesh Public Service Commission & Others*" reported in (2008) 17 SCC 703. We hope and trust that the High Court will scrupulously follow the time schedule fixed in the aforesaid judgment.

The presence of the Registrar General/Registrar, for the present, is dispensed with.

With regard to Bihar

List on 07.05.2015 at 3.30 p.m.

The Law Secretary of the State of Bihar is directed to be present before this Court along with the Registrar General of High Court on the next date of hearing.

With regard to Rajasthan

Pursuant to the directions issued by us, Shri N.S. Meratwal, Registrar (Examinations) and Shri Sudhir Pareek, Registrar (Writs) are present before us.

Shri Sunil K. Jain, learned counsel appearing for the High Court of Rajasthan has furnished before this Court, status report with regard to the vacancies in subordinate judiciary as on 25.04.2015. In the said status report, he has also stated that the High Court has issued necessary advertisement to fill up the vacancies in the subordinate judiciary, on 27.04.2015.

We request the High Court to complete the selection process as early as possible, at least within the timeframe indicated by this Court in the case of *"Malik Mazhar Sultan (3) & Another. vs. Uttar Pradesh Public Service Commission & Others, reported in (2008) 17 SCC 703"*.

An appropriate affidavit shall be filed by the High Court of Rajasthan within six months from today.

The High Court, after completing the recruitment process, has furnished the names of 187 candidates for the post of Civil Judges (Junior Division) sometime in the month of November, 2014. In spite of lapse of nearly four months, the State Government appears to have done nothing in the matter. Therefore, we direct the

State Government to immediately consider the request made by the High Court and issue necessary letters of appointment to the candidates, if they are otherwise eligible for appointment, within eight weeks' time from today positively.

The presence of the Registrar General/Registrar is dispensed with for the present.

With regard to other States

The Registrar Generals/Registrars of the High Courts of Calcutta, Delhi, Bombay and Punjab and Haryana shall file appropriate affidavits on or before 07.07.2015 and be present before this Court to assist us in passing appropriate orders on 14.07.2015.

Call on 14.07.2015 at 3.30 p.m.

(Neetu Khajuria)
Sr.P.A.

(Charanjeet Kaur)
A.R.-cum-P.S.