

ITEM NO.1

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)

(for considering the position in relation to the States of
Jharkhand, Karnataka and Kerala.(Name of Amicus Curiae i.e. Mr
Vijay Hansaria, Mr. Shyam Divan and Mr. Gaurav Agrawal))

Date : 30-11-2023 This appeal was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE MANOJ MISRA

Mr. Vijay Hansaria, Sr. Adv. (A.C.)

Mr. Gaurav Agrawal, Adv. (A.C.)

For Appellant(s)

Mr. Ejaz Maqbool, AOR

For Respondent(s)

Mr. Lakshmi Raman Singh, AOR

Ms. G. Indira, AOR

Mr. Jatinder Kumar Bhatia, AOR

Mr. Aravindh S., AOR

Mrs. D. Bharathi Reddy, AOR

Mr. Raghavendra S. Srivatsa, AOR

Mr. Suwendu Suvasis Dash, AOR

Mr. Ashok Kumar Singh, AOR

Mr. Y. Raja Gopala Rao, AOR

Mr. Pradeep Misra, AOR

Mr. Vishnu Sharma, AOR

Ms. Mrinal Gopal Elker, AOR

Mrs. Aishwarya Bhati, ASG

Mr. R Bala, Sr. Adv.

Mr. Pratyush Shrivastava, Adv.

Mrs. Swarumapa Chaturvedi, Adv.

Mrs. Chitrangda Rastaravara, Adv.

Mr. Arvind Kumar Sharma, AOR

Ms. Enakshi Mukhopadhyay Siddhanta, AOR

Mr. Sovon Siddhanta, Adv.

Mr. Marikannan N., Adv.

Mr. Saravanan A, Adv.

Mr. S. Silambarasan, Adv.

Mr. Kamendra Mishra, AOR

Ms. Asha Jain Madan, AOR

Ms. Hemantika Wahi, AOR

Ms. S. Janani, AOR

Mr. Pukhrambam Ramesh Kumar, AOR

Mr. Karun Sharma, Adv.

Ms. Rajkumari Divyasana, Adv.

Mr. Siddhesh Shirish Kotwal, Adv.
Ms. Ana Uapdhyay, Adv.
Ms. Manaya Hasija, Adv.
Mr. Tejasvi Gupta, Adv.
Mr. Pawan Upadhyay, Adv.
Mr. T. Illayarasu, Adv.
Mr. Nirnimesh Dube, AOR

Mr. Wasim A. Qadri, Sr. Adv.
Mrs. Mrinal Elkar Mazumdar, Adv.
Mr. Kanu Agarawal, Adv.
Mr. Madhav Sinhal, Adv.
Mr. Pratyush Shrivastava, Adv.
Ms. Chitrangda Rashtrawara, Adv.
Mr. Ishaan Sharma, Adv.
Mr. Mukesh Kumar Maroria, AOR

Mr. R. Sathish, AOR

Mr. Ajay Pal, AOR

Mr. Abhijit Sengupta, AOR

Mr. T.V. Ratnam, AOR

Mr. M. Yogesh Kanna, AOR

Mr. Raj Bahadur Yadav, AOR

Mr. D.K Thakur, Adv.
Mr. Rajeev Kumar Gupta, Adv.
Mr. Tavleen Singh, Adv.
Ms. Vallabhi Shukla, Adv.
Mr. Joginder Mann, Adv.
Mr. Divyansh Thakur, Adv.
Mr. Bimlesh Kumar Singh, AOR
Mr. Kanwal Chaudhary, Adv.
Mr. Neeraj Aggarwal, Adv.
Mr. Gurmeet Singh, Adv.
Ms. Niharika, Adv.

Mr. Jagjit Singh Chhabra, AOR

Mr. T.V. George, AOR
Mrs. Bina Gupta, AOR
Mr. T. Mahipal, AOR
Mr. Santosh Kumar - I, AOR
Mr. Kumar Mihir, AOR
Mr. K.K. Mohan, AOR
Ms. Sumita Hazarika, AOR
Mr. B. Balaji, AOR
Mr. Sunil Kumar Jain, AOR
Mr. Anandh Kannan N., AOR
Mr. Lokesh Sinhal, Sr. AAG
Mr. Alok Sangwan, Sr. AAG
Mr. Rajat Sangwan, Adv.
Mr. Sumit Kumar Sharma, Adv.
Mr. Vishnu Tallapragada, Adv.
Mr. Vaibhav Yadav, Adv.
Dr. Monika Gusain, AOR
Mr. R. Nedumaran, AOR
Mr. Shibashish Misra, AOR
Ms. Asha Gopalan Nair, AOR
Mr. Ashwani Kumar, AOR
Mr. Karan Bharihoke, AOR
Mr. Barun Kumar Sinha, AAG
Mr. Rajiv Shanker Dvivedi, Adv.
Ms. Tulika Mukherjee, AOR
Mr. Siddharth, AOR

Mr. Sandeep Sudhakar Deshmukh, AOR
Mr. Nishant Sharma, Adv.
Mr. Swapnil Anil Walde, Adv.

Mr. M.R. Shamshad, AOR

Mrs. Naresh Bakshi, AOR

Mr. Anuvrat Sharma, AOR

Mr. Naresh K. Sharma, AOR
Mr. Gaurav Sharma, Adv.

Mr. Vinod Sharma, AOR

Mr. G.N. Reddy, AOR

Mr. Shailesh Madiyal, AOR

Mr. P.I. Jose, AOR
Mr. Ravi Sagar, Adv.
Mr. Remish Lakra, Adv.

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Mr. Naresh Kumar, AOR

Mr. K. Parameshwar, AOR
Ms. Arti Gupta, Adv.
Ms. Kanti, Adv.
Mr. Chinmay Kalgaonkar, Adv.

Mr. Sahil Tagotra, AOR
Mr. Sakshi Garg, Adv.

Mr. Rushab Aggarwal, Adv.
Mr. Pashupathi Nath Razdan, AOR
Ms. Riddhima J Aggarwal, Adv.
Mr. Japnish Singh Bhatia, Adv.
Mr. Aashish Chojar, Adv.
Ms. Alka Chojar, Adv.

Mr. Arun K. Sinha, AOR

Mr. V.N. Raghupathy, AOR
Mr. Manendra Pal Gupta, Adv.
Mr. Md. Apzal Ansari, Adv.
Mr. Varun Varma, Adv.

Mr. Ranjan Mukherjee, AOR

Mr. G. Prakash, AOR

M/s. Plr Chambers & Co.

Ms. Deepanwita Priyanka, AOR

Mr. Gaurav Agrawal, AOR

Mr. Raghvendra Kumar, AOR
Mr. Devvrat Singh, Adv.
Mr. Kailas U More, Adv.
Mrs. Nirmla D Borade, Adv.
Mr. Anand Kumar Dubey, Adv.
Mr. Maneesh Pathak, Adv.

Dr. Manish Singhvi, Sr. Adv.
Ms. Shubhangi Agarwal, Adv.
Mr. Apurv Singhvi, Adv.
Mr. Milind Kumar, AOR

Mr. Gopal Singh, AOR

Mr. P.N. Ravindran, Sr. Adv.
Mr. T.G. Narayanan Nair, AOR
Ms. Swathi H. Prasad, Adv.

Mr. Kaushal Yadav, AOR

Mr. P.B. Suresh, Adv.
Mr. Vipin Nair, AOR
Mr. Karthik Jayashankar, Adv.
Mr. Anshumaan Bahadur, Adv.
Mr. P.b.sashaankh, Adv.

Ms. Sneha Kalita, AOR

Mr. Maibam Nabaghanashyam Singh, AOR

Mr. Shrirang B. Varma, Adv.

Mr. Siddharth Dharmadhikari, Adv.

Mr. Aaditya Aniruddha Pande, AOR

Mr. Bharat Bagla, Adv.

Mr. Sourav Singh, Adv.

Mr. Aditya Krishna, Adv.

Ms. Raavi Sharma, Adv.

Mr. Krishnanand Pandeya, AOR

Ms. K. Enatoli Sema, AOR

Ms. Limayinla Jamir, Adv.

Mr. Amit Kumar Singh, Adv.

Ms. Chubalemla Chang, Adv.

Mr. Prang Newmai, Adv.

M/s. Parekh & Co.

Mr. Shail Kumar Dwivedi, AOR

Mr. Anil K. Jha, AOR

Ms. Ripul Swati Kumari, Adv.

Mr. Himanshu Chakraborty, Adv.

Ms. Astha Sharma, AOR

Mr. Sumeer Sodhi, AOR

Mr. Dhruv Wadhwa, Adv.

Ms. Shreya Singh, Adv.

Mr. Santosh Krishnan, AOR

Ms. Deepshikha Sansanwal, Adv.

Mr. Rana Ranjit Singh, AOR

Mr. Vivek Kumar Singh-, Adv.

Mr. Ravish Singh, Adv.

Ms. Akanksha Singh, Adv.

Mrs. Sweta Singh, Adv.

Mr. Abhilash Tripathi, Adv.

M/s. Corporate Law Group

Mr. Ashok Mathur, AOR

Ms. Uttara Babbar, AOR
Ms. Sampriti Baksi, Adv.

Mr. Nishe Rajen Shonker, AOR

Mr. Jaideep Gupta, Sr. Adv.
Mr. Kunal Chatterji, AOR
Ms. Maitrayee Banerjee, Adv.
Mr. Rohit Bansal, Adv.
Ms. Kshitij Singh, Adv.
Mr. Sohom Sau, Adv.

Mr. Merusagar Samantaray, AOR

Ms. Kamini Jaiswal, AOR

Ms. Ruchi Kohli, AOR

Ms. Preetika Dwivedi, AOR
Mr. Abhisek Mohanty, Adv.

Mr. Malak Manish Bhatt, AOR

Mr. Amit Anand Tiwari, AAG
Mr. Sabarish Subramanian, AOR
Ms. Devyani Gupta, Adv.
Mr. C Kranthi Kumar, Adv.
Mr. Vishnu Unnikrishnan, Adv.
Mr. Naman Dwivedi, Adv.
Mr. Danish Saifi, Adv.
Ms. Tanvi Anand, Adv.

Mr. Krishnayan Sen, AOR

Mr. Anil Shrivastav, AOR

Mr. Kamal Mohan Gupta, AOR

Mr. Radha Shyam Jena, AOR

Mr. Parijat Sinha, AOR

Mr. Narendra Kumar, AOR

Mr. Atul Sharma, AOR

Mr. Sri Harsha Peechara, Adv.

Mr. Duvvuri Subrahmanya Bhanu, Adv.

Ms. Pallavi, Adv.

Ms. Kriti Sinha, Adv.

Mr. Akshat Kulshreshtha, Adv.

Mr. Rajiv Kumar Choudhry, AOR

Mr. Arjun Garg, AOR

Mr. Aakash Nandolia, Adv.

Ms. Sagun Srivastava, Adv.

Ms. A. Subhashini, AOR

Ms. Binu Tamta, AOR

Mr. Prakash Kumar Singh, AOR

Mr. Sibho Sankar Mishra, AOR

Mr. Satish Pandey, AOR

Mr. Akbar Ali, Adv.

Mr. Braj Kishore Mishra, Adv.

Mr. Anirudh Bankura, Adv.

Mrs. Lalita Gupta, Adv.

Ms. Jay Jaimini Pandey, Adv.

Ms. Sadiya Shakeel, Adv.

Mr. Manmohan Sharma, Adv.

Mr. Harendra Kumar Sharma, Adv.

Mr. Abhishek Kumar Singh, Adv.

Mr. Atiqur Rahman Siddique, Adv.

Mrs. Gulfeshan Javed, Adv.

Mr. Gautam Narayan, AOR

Mr. Gautam Narayan, Adv.

Ms. Asmita Singh, Adv.

Mr. Harshit Goel, Adv.

Mr. Sujay Jain, Adv.

Mr. Shuvodeep Roy, AOR

Mr. Kabir Shankar Bose, Adv.

Mr. Deepayan Dutta, Adv.

Mr. Saurabh Tripathi, Adv.

Mr. Sunil Kumar Verma, AOR

Mr. Braj Kishore Mishra, AOR

Mr. Ardhendumauli Kumar Prasad, AOR

Sayaree Basu Mallik, AOR

Ms. Purnima Krishna, AOR

Mr. Talha Abdul Rahman, AOR

Mr. Devashish Bharuka, AOR

Ms. Sarvshree, Adv.

Ms. Swati Mishra, Adv.

Mr. Somesh Chandra Jha, AOR

Mr. Sumeer Sodhi, AOR

Mr. Dhruv Wadhwa, Adv.

Ms. Shreya Singh, Adv.

Mr. Surender Kumar Gupta, AOR

Mr. Dilip Annasaheb Taur, AOR

Mr. Amol V Deshmukh, Adv.

Mr. John Mathew, Adv.

Mr. Ranjan Kumar, AOR

Mr. Kapil Dev Yadav, Adv.

Mr. Sanjeev Kumar, Adv.

Ms. Kirti, Adv.

Ms. Sakshi Kakkar, AOR

Mr. Sanjeev Malhotra, AOR

Mr. Gaichangpou Gangmei, AOR
Mrs. Lothungbeni T. Lotha, Adv.
Mr. Yimyanger Longkumer, Adv.

Mr. Omprakash Ajitsingh Parihar, AOR
Mr. Arbind Kumar, Adv.

Mr. Ajay Kumar Singh, AOR

Mr. Gurminder Singh, Adv.Gen., Punjab
Ms. Nupur Kumar, Adv.

Mr. Md. Tauheed Arshi, Adv.

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

State of Jharkhand

- 1 The vacancy position in the district judiciary in the State of Jharkhand is indicated in the note which has been submitted by Mr Gaurav Agrawal, *Amicus Curiae* in the following terms:

"1) District Judges - Direct Recruitment [25%]:

Sanctioned strength - **59**

Working strength - **44**

Vacancies - **18**

Recruitment for last year has just been completed on 09.11.2023 leaving a total of 18 vacancies. 18 vacancies will be notified within two (02) weeks. Thereafter, as per prescribed calendar the recruitment process will be commenced. These vacancies have arisen as follows - 09 vacancies due to non-availability of candidates in previous recruitment; 06 vacancies due to retirement, 03 anticipated vacancies (till 31.03.2024)

2) **District Judges- Limited Competitive Exam [10%]**Sanctioned strength - **24**Working strength - **Nil**Vacancies - **07 + 05 = 12 vacancies**

17 officers were appointed under regular promotion (65%) as the officers in LCE quota did not qualify. 07 vacancies remained unfilled. 05 more vacancies are anticipated till 31.03.2024. The 12 vacancies will be notified within two (02) weeks and thereafter recruitment process will be commenced.

3) **District Judges - Promotion Quota [65%]:**Sanctioned strength - **154**Working strength - **171***Vacancies - **NIL**

*17 excess officers are working under this quota, as they are adjusted from Limited quota under Rule 4(c) of the Jharkhand Superior Judicial Service (Recruitment, Appointment & Conditions of Service) Rules, 2001.

4) **Civil Judges - Senior Division**Sanctioned strength - **155**Working strength - **150**Vacancies - **05**

On 10.11.2023, 29 Officers from the rank of Civil Judges (Jr. Div.) were promoted to the rank of Civil Judges (Sr. Div.), 05 vacancies are not filled up due to non-suitability/ineligibility of the officers. The 05 vacancies are expected to be filled up within three (03) months.

5) **Civil Judges - Junior Division**Sanctioned strength - **301**Working strength - **148**

Vacancies - **153**

Advertisement has been issued by the Jharkhand Public Service Commission on 14.08.2023 to fill up 138 vacancies. The Jharkhand Public Service Commission may be directed to expeditiously complete the process in a time bound manner.”

- 2 For the direct recruitment of District Judges (25%), eighteen vacancies are to be notified within a period of two weeks so that the recruitment process can commence in terms of the prescribed calendar. The exercise shall be carried out expeditiously and on schedule.
- 3 Likewise, twelve vacancies for the post of District Judge (Limited Competitive Examination - 10%) are to be notified within two weeks after which the recruitment process will commence. The recruitment process shall be carried out expeditiously and on schedule.
- 4 Five vacancies in the post of Civil Judges (Senior Division) are expected to be filled up in three months. This exercise shall be carried out expeditiously so that the time schedule is observed.
- 5 An advertisement has been issued by the Public Service Commission, Jharkhand to fill up one hundred and thirty-eight vacancies. The Public Service Commission shall expeditiously conclude the exercise, in any event on or before 31 March 2024.

Infrastructure

- 6 As regards the infrastructure, the note of the *Amicus Curiae* indicates the following position:

“COURT ROOMS:

Total number of court rooms in the State - 652

Number of court rooms owned by Judicial Department	-	315
Court rooms which are available in Government buildings	-	337
Court rooms working in Private buildings	-	NIL

1) Ongoing construction activities:

The list of ongoing projects which are required to be expeditiously completed by the State Government are as follows:

S.No.	Project	Current Status
1	12 Court halls at Lohardaga	12 Court halls are being constructed in a Two-Phase manner. The Second Phase of 6 Court halls can be undertaken only after the First Phase is completed. The First Phase which was to be completed by December 2023 is running behind schedule by 6 (six) months.
2	09 Court halls at Gumla	09 Court halls are to be constructed after the demolition of the erstwhile 06 Court halls. However, before the demolition, the Record Room, Malkhana and Stationery has to be shifted. The Civil Court administration has sought help of District Administration to assign some vacant building. Till date, no appropriate place has been allotted due to which the initiation of the project has been delayed.
3	10 Court halls at Chakardharpur, West Singhbhum at Chaibasa	10 Court halls are at their final stages and only furnishing and finishing works alongwith electrical infrastructure has to be installed.

2) Proposals for court complex/rooms pending administrative sanction / at pre sanction stage:

S.No.	Project	Current Status
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1	12 Court halls at Lohardaga	11.50 acres of land has been transferred. State Government has to prepare site plan and DPR so that the next stage of the process can be initiated.
2	41 Court halls at Deoghar	20.00 acres of land has been transferred. Certain modifications have been flagged by the Principal District Judge, Deoghar which needs to be incorporated by the State Government, followed by submission of DPR and Site Plan.
3	40 Court halls at Palamau at Daltonganj	Architectural drawings have been submitted to the Hon'ble High Court for approval.
4	23 Court halls at West Singhbhum at Chaibasa	'Concept Plan' for the G+5 building was placed before the Hon'ble Court, whereupon the High Court has directed the State Government to prepare a detailed sketch map taking into consideration the preservation of the heritage building as well as the trees in the approach road.
5	Court halls at Godda	14.05 acres of land has been offered and inspected and the State Government has been requested to proceed with the proposal and take notional possession.
6	Sub-Divisional Court Building at Bundu (Ranchi)	4.00 acres of land has been offered and inspected and the inspection report is pending approval of the Hon'ble High Court.
7	Sub-Divisional Court Building at Bagodar-Sariya (Giridih)	The State Government has not yet identified the land for the project.

- 7 The above note refers to (i) ongoing constructions activities; and (ii) proposals which are pending administrative sanction.

- 8 In order to facilitate the expeditious commencement and completion of construction activities, a meeting shall be convened by the Building Committee of the High Court, preferably within a period of three weeks. The meeting shall be attended by:
- (i) Advocate General of the State of Jharkhand;
 - (ii) Finance Secretary of the State of Jharkhand;
 - (iii) Law Secretary of the State of Jharkhand; and
 - (iv) The Registrar General of the High Court of Jharkhand.
- 9 Mr Gaurav Agrawal, *Amicus Curiae*, the Standing Counsel for the State of Jharkhand and the Standing Counsel for the High Court of Jharkhand may be permitted to participate in the meeting through the video conferencing platform.
- 10 Decisions shall be taken at the meeting so convened so as to ensure that a PERT chart and time schedule are set down for the ongoing construction activities and for the proposals which are pending administrative sanction.
- 11 We request the Building Committee of the High Court together with other members, as directed above, to periodically review the progress of the construction activities at least once every two months or earlier so that the ongoing constructions are completed expeditiously.

Manpower

- 12 As regards manpower, the position in the State of Jharkhand has been set out in the note of the *Amicus Curiae* as follows:
- "1) Manpower status relating to District Judiciary of the State of Jharkhand is as follows:

S. No.	Name of the posts	Sanctioned strength	Working strength	Vacancy position
1.	Assistant/Clerk	2106	1559	547
2.	Stenographer (Hindi+English)	701	321	380
3.	Deposition Writer	433	259	174
4.	Copyist/Typist	87	60	27
5.	Driver	169	120	49
6.	Group D	2224	1679	545

2) Proposal for creation of 214 posts of Class III and 44 posts for Class IV have been made to the State Government. Out of the said posts, 75 Class III posts have been sanctioned. The State Government may be directed to consider the request made by the High Court for sanction of remaining posts expeditiously.

3) Out of 24 Districts of the State of Jharkhand, all the judgships have floated the advertisement for filling up the vacancies of the Class IV posts. 06 Districts i.e. Dhanbad, Garhwa, Gumla, Koderma, West Singhbhum at Chaibasa and Khunti have already published their respective results, while for the rest of 18 judgships the process is at various stages of recruitment.

4) The recruitment for appointments of Class III posts by the Hon'ble High Court is under process and advertisement is likely to be published within one (01) month."

- 13 The tabulated statement indicates that there are large vacancies which are pending in the staff of the district judiciary. Expeditious steps must be taken by the High Court to ensure that these vacancies are filled up. Moreover, the State Government shall on or before 31 December 2023 take a final decision on the proposal of the High Court for the creation of Class III and IV posts as set out above. Where the State Government has already granted its sanction for the creation of posts, the High Court shall lay down an expeditious time

schedule for the initiation and completion of the recruitment process. Where advertisements have been issued for filling up of vacancies in Class IV posts in the twenty-four districts of the State, the High Court shall monitor through the Registrar General the expeditious conclusion of the process. Likewise, where the results have been published for six districts, the process shall be taken to its logical conclusion expeditiously. For the rest of the eighteen districts, the process which is at various stages of recruitment shall likewise be expeditiously concluded. The process in respect of Class III posts shall be initiated expeditiously and the High Court shall make all endeavour to conclude the process within a time bound schedule.

- 14 A compliance report shall be filed by the Registrar General of the High Court by 30 April 2024.

State of Karnataka

- 1 The note submitted by the *Amicus Curiae* reveals the following status in respect of the vacancy position in the district judiciary:

“1) **District Judges- Direct Recruitment** [25%]:

Sanctioned strength - **96**

Working strength - **77**

Vacancies - **19**

3 persons have been selected recently i.e. on 22.08.2023. Their appointment is not yet notified and the process may take another 1 month. 14 vacancies have been advertised on 19.10.2023 and the last date for receipt of applications is 17.11.2023. This process would take about 6 months for completion. Two vacancies have arisen after the advertisement on 19.10.2023 due to creation of new posts.

2) **District Judges -Limited Competitive Exam** [10%]

Sanctioned strength - **38**

Working strength - 5
Vacancies - 33

The Full Court in its meeting dated 22.08.2023 decided to fill 23 vacancies under the 65% promotion quota and 10 vacancies by LCE. Applications have been called from Civil Judges [Sr. Div.] for appearing in the examination. 35 applications have been received. The process for recruitment is likely to be completed in about 3 months.

3) **District Judges - Promotion Quota [65%]:**

Sanctioned strength - 250
Working strength - 219
Vacancies - 31

Due to addition of vacancies from LCE quota and other vacancies which are likely to arise till December, 2023, 59 vacancies have been identified for being filled up. 177 Civil Judges [Sr. Div.] are eligible for being considered for promotion. They have submitted judgments for perusal of the High Court on 10.11.2023. The process is likely to be completed in about 4 months.

4) **Civil Judges - Senior Division**

Sanction strength - 437
Working strength - 403
Vacancies - 34

Though assessment of judgments and awarding of marks on the ACR etc is complete, for the present promotions are not being made for 34 vacancies due to non-availability of accommodation. An assessment would be made by the Hon'ble Committee in January, 2024 and depending upon accommodation availability and other factors, decision would be taken regarding filling up of the 34 vacancies.

5) **Civil Judges - Junior Division**

Sanctioned strength - **554**

Working strength - **447**

Vacancies - **107**

57 vacancies were notified on 09.03.2023, and 997 candidates are eligible for the written examination to be held on 18th and 19th November 2023. The process is likely to be completed in about 4 months. The remaining 50 vacancies will be notified after the present process is completed.”

- 2 The time schedule as indicated above shall be duly complied with.
- 3 The Registrar General shall monitor the process and submit a compliance report to this Court by 30 April 2024.

Infrastructure

- 4 The position in regard to the infrastructure is set out in the note of the *Amicus Curiae* as follows:

“Court rooms:

Total number of court halls in the State	- 1199
Number of court rooms owned by the Judicial Department	- 955
Court rooms which are available in Government buildings	- 215
Court rooms working in rented buildings	- 29

Note: Though there are a large number of proposals pending with the State Government, the important proposals/projects requiring immediate directions have been set out hereinbelow:

1) Proposals for court complex/rooms pending administrative sanction:

Sl. No.	Name of project	Required additional amount
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(in Rupees)

1	Construction of New Court Complex at Basavakalyan, Bidar District	15 crores
2	Construction of New Court Complex at Gajendragad, Gadag District	10 crores
3	Construction of Additional Court Building at Navangar, Bagalkot District	17.60 crores

2) Details regarding ongoing construction of court halls where additional amounts are required

Sl. No.	Name of project	Required additional amount (in Rupees)
1	Additional works such as Compound wall, internal roads, sheet roofing, pavers, CC Drain, electrification & Other works surrounding the Court Premises at Mudalagi, Belagavi District	1.85 crores
2.	Additional works such as Compound wall, CC road, drains, street lights, parking shed, sump and landscaping works at New District Building at Yadgir	9.00 crores

Note: While the new Court rooms have been constructed, however they are not yet inaugurated/functioning as the works (elaborated hereinbelow) are stalled due to lack of funds. These proposals are pending for more than a year

c) Details of proposals regarding transfer/identification of lands for Court construction pending before State Government :-

Sl. No.	Name of project	Extent of land sought for
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1	Expansion of Court Building at Sira, Tumakuru District	To hand over the old Tahasildar office building situated adjacent to the existing Court Building at Sira (Revenue Department)
2	a) Construction of Court Building & Judicial Officers Quarters at Tarikere, Chikkamagaluru District	Old Assistant Commissioner office building measuring 316.74 sq mtr and vacant land measuring 1943.01 sq mtr (Revenue Department).
	b) Construction of Court Building and Judicial Officers Quarters at Tarikere, Chikkamagaluru District	3280 sq mtrs of land situated to the southern side of the Court compound at Tarikere (PWD Department)
3	Construction of Court Building and Judicial Officers Quarter at Kagawad, Belagavi District	Allotment of PMC Land measuring 3 acres to the Judicial Department (PWD Department)
4	Construction of Court Building at Afzalpur, Kalaburagi District	Allotment of Government land measuring 4 acres in Sy. No.348/7 belonging to Bheema Minor Irrigation Department.
5	Construction of Annex Court Building at Ramanagara District	2 acres of land situated adjacent to the District Court complex facing Nation Highway-275 (Rural Development & Panchayath Raj Department)

- 5 The above note refers to (i) proposals which are pending administrative sanction; (ii) ongoing construction activities; and (iii) transfer/identification of lands for court construction pending before State Government.
- 6 In order to facilitate the expeditious commencement and completion of construction activities, a meeting shall be convened by the Building Committee of the High Court, preferably within a period of three weeks. The meeting shall be attended by:

- (i) Advocate General of the State of Karnataka;
- (ii) Finance Secretary of the State of Karnataka;
- (iii) Law Secretary of the State of Karnataka; and
- (iv) The Registrar General of the High Court of Karnataka.

- 7 Mr Gaurav Agrawal, *Amicus Curiae*, the Standing Counsel for the State of Karnataka and the Standing Counsel for the High Court of Karnataka may be permitted to participate in the meeting through the video conferencing platform.
- 8 Decisions shall be taken at the meeting so convened so as to ensure that a PERT chart and the time schedule is set down for the ongoing construction activities and for the proposals which are pending administrative sanction.
- 9 We request the Building Committee of the High Court together with other members, as directed above, to periodically review the progress of the construction activities at least once every two months or earlier so that the ongoing constructions are completed expeditiously.

Manpower

- 10 As regards the manpower, several proposals are pending before the State Government for over three years as set out in the tabulated statement extracted below:

Sl. No.	Subject	Number of posts requested by the High Court	Number of posts sanctioned by the Govt	Differential posts
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1	Establishment of Family Court at Shivamogga, Dharwad & DK Mangaluru	78	42	36
2	Establishment of 10 Family Courts in the State	260	140	120
3	Establishment of the Courts of Senior Civil Judge & JMFC, Hoskote in Bengaluru Rural District and Kushtagi in Koppal District	74	32	42
4	Establishment of the Court of Civil Judge & JMFC, Kittur in Belagavi District	27	16	11
5	Increasing the number of Judges/ Courts in Subordinate	3024	1950	1074
6	Establishment of the Court of Sr. Civil Judge and JMFC in Navalgund, Somwarpet, Mulbagal, Devadurga, Hosanagar	185	80	105
7	Establishment of Civil Judge & JMFC, Kushalnagar in Kodagu-Madikeri District by Shifting of Addl. Civil Judge & JMFC Somwarpet to Kushalnagar	27	18	9
8	Establishment of 22 Family Courts in the State	572	308	264
9	Establishment of Court of Senior Civil	37	16	21

	Judge & JMFC, Shiggaon by shifting the court of Addl. Senior Civil Judge & JMFC, Hrekerur			
10	Establishment of Court of IV Addl. District & Sessions Court, Kalaburagi, sitting at Sedam (by shifting IV Addl. District & Sessions Judge Court, Kalabugi to Sedam)	37	16	21
11	Establishment of Court of 2 Addl. City Civil & Sessions Courts to sit at Kengeri & Yelahanka & 2 ACMM Courts to sit at Kengeri & Yelahanka respectively	23	17	6
12	Establishment of 2 dedicated Commercial Courts	39	24	15
13	Establishment of 13 Family Courts	338	182	156

- 11 We direct that within three weeks, a meeting shall be held between the Advocate General of the State of Karnataka, the Finance Secretary and the Law Secretary of the State of Karnataka and the Registrar General of the High Court of Karnataka so that a final decision can be taken on the pending proposals. The final decision shall be communicated to the High Court no later than by 31 December 2023.

State of Kerala

- 1 The vacancy position in the district judiciary in the State of Kerala is indicated in the note which has been submitted by Mr Gaurav Agrawal, *Amicus Curiae* in the following terms:

"A) **District Judges- Direct Recruitment [25%]:**

Sanctioned strength - **46**

Working strength - **41**

Vacancies - **5**

The selection process against 5 regular vacancies is nearing completion, as viva voce examination has been completed. The process will be concluded within 2 months.

B) **District Judge -Limited Competitive Exam [10%]**

Since the candidates get promoted to the District and Sessions Judge cadre before completion of 5 years, this mode of recruitment has not been effected in the State of Kerala. The vacancies under LCE quota is accounted for in the promotion quota of 65% as per the second proviso to the Rule 2(1) of Kerala State Higher Judicial Service Rules, 1961.

C) **District Judge- Promotion Quota [65%]:**

Sanctioned strength - **194**

Working strength - **176**

Vacancies - **21**

On 03.06.2023, a notification was issued to fill 27 vacancies. The ACR and judgment evaluation is almost complete. The suitability test-cum-interview process would be conducted after which the Final Select list will be sent to Government for approval. The entire process will be concluded within 2 months.

D) **Civil Judges [Sr. Division]**

Sanction strength - **97**

Working strength - **93**

Vacancies - **4**

On 10.05.2023, the notification was issued for 31 vacancies. The process will be concluded within 2 months.

E) **Civil Judge [Junior Division]**

Sanctioned strength - **268**

Working strength - **207**

Vacancies - **61**

69 vacancies were notified and viva voce examination scheduled from 06.11.2023 to 27.11.2023 is underway. The entire recruitment process is expected to be completed in three months.”

- 2 The time schedule as indicated above shall be duly complied with.
- 3 The Registrar General shall monitor the process and submit a compliance report to this Court by 30 April 2024.
- 4 The pending proposals for NOC from the Jail Department before the State Government are extracted below:

Court centres where NOC from jail required

Sl. No.	Court Centre
1	Chittur
2	Alathur
3	Kottayam
4	Ottappalam
5	Mavelikkara
6	Aluva

- 5 We direct that a meeting be convened within three weeks between the Advocate General of the State of Kerala, the Secretary of the Home Department, the Finance Secretary and the Law Secretary of the State of

Kerala, the Director General of Prisons and the Registrar General of the High Court so that the above issue is sorted out by 15 January 2024.

- 6 The Law Secretary and the Finance Secretary of the State of Kerala shall hold a meeting with the Registrar General of the High Court of Kerala within a period of two weeks and necessary sanction to execute urgent construction/repair/maintenance work in the buildings owned by the Local Self Government Department which are presently accommodating Gram Nyayalayas by utilizing the funds/grants placed at the disposal of the judiciary shall be issued on or before 31 December 2023.

IA Nos 110757 of 2020

- 1 Mr P N Ravindran, senior counsel appearing on behalf of the applicant states that the Interlocutory Application has been rendered infructuous since the process has already been completed.
- 2 The Interlocutory Application is disposed of.

IA No 113777 of 2019 and IA No 126264 of 2019

- 1 On the request of counsel for the applicants, we allow the Interlocutory Applications to be withdrawn so as to enable the applicant to move the High Court in its jurisdiction under Article 226 of the Constitution with the grievance. The High Court may sympathetically consider expeditious disposal.
- 2 The Interlocutory Applications are permitted to be withdrawn.

IA Nos 28741 of 2023 and IA No 28744 of 2023

- 1 Ms Sarvshree, counsel for the applicants seeks the permission of the Court to withdraw the Interlocutory Applications.
- 2 The Interlocutory Applications are dismissed as withdrawn.

Civil Appeal No 1867 of 2006

- 1 List the appeal on 8 December 2023 for considering the position in relation to the NCT of Delhi along with IA No 37616 of 2021, IA Nos 51919, 51992 and 52071 of 2023 (pertaining to Maharashtra State Judges Association).
- 2 Mr Shyam Divan, *Amicus Curiae* is requested to assist the Court on the next date of listing.

(CHETAN KUMAR)
A.R. -cum-P.S.

(SAROJ KUMARI GAUR)
Assistant Registrar