

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
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 directions and exemption from filing O.T. and intervention and permission for variation in the time schedule in the time schedule and permission to file reply affidavit with office report for directions)

with

I.A. NO.86 (APPLN. FOR INTERVENTION)

Date: 10/09/2010 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE D.K. JAIN

HON'BLE MR. JUSTICE H.L. DATTU

Mr. Vijay Hansaria, Sr. Adv. (AC)
Ms. Sneha Kalita, Adv.

For Appellant(s) Mr. Ejaz Maqbool, Adv.

In IA 86 Mr. E.C Vidya Sagar, Adv.

For Respondent(s) Mr. Lakshmi Raman Singh, Adv.

State of Chhattisgarh Mr. Atul Jha, Adv.
Mr. Dharmendra Kumar Sinha, Adv.

Mr. Ranjan Dwivedi, Adv.

State of W.B. Mr. Bhaskar P. Gupta, Sr. Adv.
Mr. Tara Chandra Sharma, Adv.
Ms. Neelam Sharma, Adv.

State of A.P. Mr. R. Sundervardhan, Sr. Adv.
Mr. G.N. Reddy, Adv.
Mr. V. Pattabhiram, Adv.

State of Arunachal Pradesh Mr. Anil Shrivastav, Adv.
Mr. Ritu Raj, Adv.

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Mr. Nishe Rajen Shonker, Adv.

Mr. Amit Kumar, Adv.

Mr. Shankar Divate, Adv.

State of Jharkhand Mr. Anil Kr. Jha, Adv.
Mr. Santosh Kumar, Adv.

Ms. A.Subhashini ,Adv

Allahabad HC
Mr. Ashok K. Srivastava ,Adv
Mr. Amit Sthalekar, Adv.
Mr. Slaiwal Srivastava, Adv.

Mr. Arun K. Sinha ,Adv

Ms. Asha Jain Madan ,Adv
Mr. Ashok Mathur ,Adv
Mr. Anis Suhrawardy ,Adv
Mr. B.B. Singh ,Adv
Ms. Bina Gupta ,Adv
Mr. Bharat Sangal ,Adv
Mr. R.R. Kumar, Adv.
Ms. Binu Tamta ,Adv
Mr. Dharam Bir Raj Vohra ,Adv
Mr. G.S. Chatterjee ,Adv
Mr. G. Prakash ,Adv

NCT of Delhi
Mr. P.P. Malhotra, ASG
Mr. S.W.A. Qadri, Adv.
Mr. Mukesh Verma, Adv.
Mrs. Anil Katiyar, Adv.

State of Bihar/
Tripura
Mr. Gopal Singh ,Adv
Mr. Manish Kumar, Adv.
Mr. Rituraj Biswas, Adv.
State of Nagaland
Mr. Edward Belho, Adv.
Mr. Kenatoli Sema, Adv.
Mr. Rituraj Biswas, Adv.

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State of Gujarat
Ms. Hemantika Wahi ,Adv
Mr. Rahul Sateeja, Adv.

HC of Orissa
Mr. Janaranjan Das ,Adv
Mr. Swetaketu Mishra, Adv.
Mr. P.P. Nayak, Adv.

Mr. K.K. Mohan ,Adv

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Ms. Kamini Jaiswal ,Adv
Mr. Sandeep S. Parekh, Adv.
Mr. Abhimanue Shrerstha, Adv.
Mr. D.P. Singh, Adv.

Mr. Naresh K. Sharma ,Adv
Mr. Pradeep Misra ,Adv

State of Mizoram
Mr. K.N. Madhusoodhanan, Adv.
Mr. R. Sathish ,Adv

Mr. S.C. Patel ,Adv

Mr. Sunil Kumar Jain ,Adv

State of UP

Mr. Shrish Kumar Misra ,Adv
Mr. D.K. Goswami, Adv.

State of Kerala

Mr. V. Giri, Sr. Adv.
Mr. T.G. Narayanan Nair ,Adv
Mr. K.N. Madhusoodhanan, Adv.
Mr. Mohammed Sadique T.A., Adv.

Mr. T.V. Ratnam ,Adv

Mr. Ugra Shankar Prasad ,Adv

State of Sikkim

Mr. A. Mariarputham, Adv.Gen.
Mrs. Aruna Mathur, Adv.
Mr. Amarjeet Singh Girsra, Adv.
M/S Arputham, Aruna & Co. ,Adv

Mr. A. Mariarputham, Sr. Adv.
Mr. Manpreet Singh Doabia, Adv.
Mr. Sunita Sharma, Adv.
Mr. R.K. Rathore, Adv.
Mr. Sunita Sharma, Adv.
Mr. D.S. Mahra, Adv.
Mr. Sudarshan Singh Rawat, Adv.

Mr. Ranjan Mukherjee ,Adv

Ms. S. Janani ,Adv

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Mr. V. Vasudevan, Adv.

State of Puducherry

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Mr. S.J. Aristotle, Adv.
Mr. Prabu Ramasubramanian, Adv.

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For applicant
In IA 78/10

Mr. Sapam Biswajit Meitei, Adv.
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Mr. Krishnanand Pandey ,Adv

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Mr. Vikrant Singh Bais, Adv.
Mr. Vikas Upadhyay, Adv.
Mr. B.S. Banthia ,Adv

State of Manipur

Mr. Khwairakpam Nobin Singh ,Adv

Mr. Radha Shyam Jena ,Adv

State of Kerala

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Mr. Anupam Mishra, Adv.

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Ms. Rachana Srivastava,Adv
Mr. A.P. Sahay, Adv.

State of Assam

Mr. Navneet Kumar, Adv.
Mr. Keshav Ray Chaudhari, Adv.
M/S Corporate Law Group ,Adv.

Mr. Ashwani Kumar ,Adv.

Mr. Rajesh Srivastava ,Adv

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Mr. C.D. Singh ,Adv
Mr. Bhupendra Pratap Singh,
Mr. Sunny Chaudhary, Adv.
Mr. Shashank Shekhar Parihar, Adv.
Ms. Sakshi Kakkar, Adv.

Mr. Jatinder Kumar Bhatia ,Adv

State of UP

Mr. Ashok K. Desai, Sr. Adv.
Mr. P.N. Mishra, Sr. Adv.
Mr. S.K. Dwivedi, AAG
Mr. T.N. Singh, Adv.
Mr. Rajeev Dubey, Adv.
Mr. Kamlendra Mishra ,Adv

HC of Patna

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Mr. Ajay Kumar Jha, Adv.
Mr. Arjun Garg, Adv.
Ms. Rukhmini Bobde, Adv.
Ms. Pallavi Srivastava, Adv.
M/S. Parekh & Co. ,Adv

Mr. T. Mahipal ,Adv

Ms. Sumita Hazarika ,Adv

Mr. Aniruddha P. Mayee ,Adv

Mr. P.V. Yogeswaran ,Adv

Mr. Siddhartha Chowdhury ,Adv

Mr. Vishnu Sharma ,Adv

Mr.T.V.George ,Adv

Mr.Prakash Kumar Singh ,Adv

Mr.Sunil Kumar Verma ,Adv

Mr. Anuvrat Sharma ,Adv

Mr. Balaji Srinivasan ,Adv

State of Rajasthan Dr. Manish Singhvi, Addl. AG
Mr. Devanshu Kumar Devesh, Adv.
Mr. Milind Kumar, Adv.
Mr. Sahil S. Chauhan, Adv.

State of Punjab Mr. Ajay Pal, Adv.
Mr. Prashant Shukla, Adv.

State of Mah. Mr. Sanjay Kharde, Adv.
Mrs. Asha G. Nair, Adv.

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Mr. Yatish Mohan, Adv.
Mr. Santosh Tripathi, Adv.
Mr. E.C. Vidyasagar, Adv.

State of J & K Mr. Sunil Fernandes, Adv.
Mr. Vikrant Nagpal, Adv.
Mr. Sidhant Goel, Adv.
Mr. Renu Gupta, Adv.

Mr. Debasis Misra, Adv.

Mr. T.N. Rao, Adv.

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

Re: State of Kerala

Despite order dated 16th August, 2010, whereby
the State of Kerala was required to file the status
report within two weeks, the same has not been filed.

In the affidavit filed by the High Court of Kerala,
dated 30th August, 2010, it is pointed out that names of

10 selected candidates (direct recruits) are still
pending clearance by the State Government. We direct

the Chief Secretary of the State of Kerala to file an
affidavit explaining the reason for delay in the
approval of the names of the selected candidates. The
requisite affidavit shall be filed within two weeks,
failing which the Chief Secretary shall remain present
in Court in person along with the relevant records.

List on 8th October, 2010.

Re: State of Andhra Pradesh

Pursuant to our order dated 16th August, 2010,

Mr. S. Sivaiah Naidu, Registrar General of the High

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Court and Mr. R Ramachandra Reddy, Secretary (Law), Government of A.P. are present in Court. An affidavit has also been filed by the High Court, but in the said affidavit the total number of vacancies (yearwise) for the post of District Judge (Direct recruit) has not been stated. It is, however, pointed out that a notification for filling up of the 18 posts of District and Sessions Judge by way of direct recruitment has been issued on 18th August, 2010. The last date for submission of the applications is stated to be 3rd September, 2010. It is further stated that a notification for filling up of 17 posts of District and Sessions Judge under the accelerated promotion quota has been issued, for which the last date of receipt of applications is also 3rd September, 2010. Status report about the further progress in this regard shall be filed by the High Court before the next date. List on 3rd December, 2010.

The personal presence of the Registrar General and the Secretary (Law) is dispensed with.

Re: State of Bihar

In the affidavit filed by the High Court, it is stated that insofar as recruitment for the post of District Judge (Direct) is concerned, the State Government has issued appointment letters for 12 posts. Similarly, one candidate has been selected in the ..8/-

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limited competitive examination for the post of Additional District Judge and 5 officers have been promoted in the promotee quota. As regards, the filling up of posts of Civil Judge (Senior Division),

it is pointed out that the process of selection for filling up of 41 vacancies for the year 2010-11, has been initiated. However, regarding 217 vacancies of Civil Judge (Junior Division), it is stated that the result of preliminary test, conducted by the Bihar State Public State Commission has not been published because of the stay granted by the High Court.

Vide order dated 23rd September, 2008, taking note of the controversy between the High Court and the State of Bihar, pertaining to the amendment of recruitment Rules, it was directed that the process of recruitment of Civil Judge (Junior Division) shall be undertaken immediately by the State of Bihar as well as the High Court "as per the existing rules". Then again, vide order dated 4th November, 2008, after hearing the learned Amicus Curiae, learned counsel for the State and the High Court, the State of Bihar was directed to send within 10 days of the date of the order a requisition to the Bihar State Public Service Commission for filling up of 217 vacancies and on such requisition being made, the requisite advertisement was directed to be issued and published by the Commission within three weeks from the receipt of the said

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requisition.

Mr. P.H. Parekh, learned senior counsel appearing on behalf of the High Court, submits that pursuant to the said directions, the process for the said recruitment was initiated by the Commission by issuing advertisement dated 9th December, 2008 and even the preliminary examination was also held. However, in the meanwhile, the State Government carried out

amendment in the Bihar Judicial Service (Recruitment)

Rules, 1955 vide notification dated 25th June, 2009 by inserting Rule 3A with retrospective effect, from 1st

October, 2008. Thereafter, in view of the said amendment, the State withdrew its earlier requisition, made to the Commission in compliance with the directions issued by this court and asked them to follow the amended rules and finalize the recruitment accordingly.

Learned counsel appearing for the State on the other hand, submits that when the matter pertaining to the State of Bihar came up for consideration before this court on 13th January, 2009, it was brought to the notice of the Court that the State was intending to amend the recruitment rules relating to reservation in such appointments and the amended rules had already been sent to the High Court as a part of consultation process, as envisaged in the Constitution.

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Be that as it may, it is clear that the directions issued by this Court vide orders dated 23rd September, 2008 and 4th November, 2008 having not been varied the State of Bihar as also the Bihar State Public Service Commission were bound to comply with them in letter and spirit. It is also pertinent to note that the issue of amendment of recruitment rules was sought to be brought to the notice of this Court by filing applications by the State but the applications are stated to have been withdrawn on 14th July, 2009.

Under the circumstances, we are constrained to issue notice to the Chief Secretary, State of Bihar, to show cause as to why appropriate action for defying the aforementioned directions be not taken against him.

Explanation if any, shall be furnished on an affidavit,
which shall be filed within four weeks from today.

Fresh Status reports shall be filed by the
State of Bihar as well as the High Court before the
next date. A copy of the stay order, stated to have
been passed by the High court along with a copy of the
petition on which such an order came to be made shall
also be filed by the High court with the status report.

List on 3rd December, 2010.

Re: State of U.P.

List on 20th September, 2010.

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Re: State of West Bengal

I.A. No. 82 : For the reasons stated in the
application, it is allowed. The recruitment process
shall be completed expeditiously.

List on 20th September, 2010.

[Charanjeet Kaur] [Kusum Gulati]
Court Master Court Master