

ITEM NO.18

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 intervention and directions and permission to bring subsequent facts and events with office report)

WITH

SLP(C) NO.28488/2008

(With prayer for interim relief and office report)

SLP(C) NO.27978/2008

(With appln. for permission to place addl. documjents on record and with prayer for interim relief and office report)

SLP(C) NO.29248/2008

(With office report)

SLP(C) CC 14852-14854/2008

(With appln. for permission to file SLP and with prayer for interim relief and office report)

W.P(C) NO. 73 of 2009 & W.P.(C) No.127/2009

(With appln. for ex-parte stay and amendment of cause title and office report)

Date: 14/07/2009 This Appeal/petitions were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE P. SATHASIVAM
HON'BLE DR. JUSTICE B.S. CHAUHAN

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

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

SLP(C) 28488/08 Mr. V.N. Raghupathy, Adv.

SLP(C) 27978/08 Mr. Pradeep Gupta, Adv.

Mr. K.K. Mohan, Adv.

SLP(C) 29248/08 Mr. C.S.N. Mohan Rao, Adv.

SLP(C) CC 14852- Mr. Kailash Vasdev, Sr. Adv.

14854/08 Mr. S.S. Ray, Adv.

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Ms. Bina Gupta, Adv.

W.P.(C) 73/09 Mr. Krishnan Venugopal, Sr. Adv.

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Mr. Arun K. Sinha ,Adv

Ms. Asha Jain Madan ,Adv

Mr. Anshul Narayan, Adv.

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Mr. S. Mehdi Imam, Adv.

For Mr. Anis Suhrawardy ,Adv

Mr. B.B. Singh ,Adv

Ms. Bina Gupta ,Adv

Mr. Gaurav Pachnanda, Adv.

Mr. Bharat Sangal ,Adv

Ms. Renu Gupta, Adv.

Ms. Mrilani Onam, Adv.

Ms. Vanika Tomar, Adv.

Ms. Binu Tamta ,Adv

Mr. Dharam Bir Raj Vohra ,Adv

Mr. Jaideep Gupta, Sr. Adv.

Mr. Raja Chatterjee, Adv.

Mr. G.S. Chatterjee ,Adv

Mr. G. Prakash ,Adv

State of Bihar

Mr. P.K. Shahi, Adv.

Mr. Gopal Singh ,Adv

Mr. Manish Kumar, Adv.

State of Tripura

Mr. Gopal Singh, Adv.

Mr. Manish Kumar, Adv.

Mr. Ritu Raj Biswas, Adv.

Ms. Hemantika Wahi ,Adv, Ms. Jesal, Adv.

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Mr. Janaranjan Das ,Adv

Mr. Swetaketu Mishra, Adv.

Mr. P.P. Nayak, Adv.

Ms. Kamini Jaiswal ,Adv

Mr. Naresh K. Sharma ,Adv

Mr. Pradeep Misra ,Adv

Mr. R. Sathish ,Adv

Mr. S.C. Patel ,Adv

Mr. Yunus Malik, Adv.,Mr. Bharat Ram, Adv.

Mr. Shrish Kumar Misra ,Adv

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Mr. Manish Mohan, Adv.

Ms. Anita Mohan, Adv.

Mr. Nirmal Kr., Adv.

Mr. Ugra Shankar Prasad ,Adv

Mr. A. Mariarputham, Sr. Adv.
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Mr. V. Dubey, Adv.
For M/S Arputham, Aruna & Co. ,Adv

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Ms. Sunita Sharma, Adv.
Ms. Rekha Pandey, Adv.
For Mr. D.S. Mahra ,Adv

Mr. Ranjan Mukherjee ,Adv

Ms. S. Janani ,Adv

Mr. V.G. Pragasam ,Adv
Mr. S.J. Aristotle, Adv.
Mr. Prabu Rama Subramanian, Adv.

Mr. Annam D.N. Rao ,Adv

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Mr. B.S. Banthia ,Adv

Mr.Khwairakpam Nobin Singh ,Adv
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Mr. Radha Shyam Jena ,Adv

Mr. Sanjay R. Hegde ,Adv

Mr. P.I. Jose ,Adv
Mr. Y. Raja Gopala Rao ,Adv

Mr. Shail Kumar Dwivedi ,Adv

Mr. R. Nedumaran ,Adv

Mr. Manjit Singh, AAG, Haryana
Mr. Kamal Mohan Gupta ,Adv

Mr. Naresh Kumar ,Adv

Mr. V.N. Raghupathy ,Adv

Mr. Abhay Prakash Sahay, Adv.
Ms. Rachana Srivastava ,Adv

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Mr. Ashwani Kumar ,Adv

Mr. Rajesh Srivastava ,Adv

M/s. C.D. Singh, Vairagya Vardhan Dubey
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Upasana Nath, Advs.

Mr. Jatinder Kumar Bhatia ,Adv

Mr. Kamlendra Mishra ,Adv

Mr. P.H. Parekh, Sr. Adv.
Mr. Ajay Kr. Jha, Adv.
Ms. Divya Sinha, Adv.
Ms. Pallavi Srivastava, Adv.

For M/S. Parekh & Co. ,Adv

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Ms. Sumita Hazarika ,Adv

Mr. Aniruddha P. Mayee ,Adv

Mr. Siddhartha Chowdhury ,Adv

Mr.T.V.George ,Adv

Mr.Prakash Kumar Singh ,Adv

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Mr.Sunil Kumar Verma ,Adv

Mr. Anuvrat Sharma ,Adv

Mr. Balaji Srinivasan ,Adv

Mr. Milind Kumar ,Adv

Mr. Ajay Pal ,Adv

Mr. Sunil K. Jain, Adv.

Mr. Ajay K. Bhatia, Adv.

Mr. Himinder Lal, Adv.

Ms. Seema Jain, Adv.

Ms. Anupama Sharma, Adv.

Mr. Vishnu Sharma, Adv.

WC 127/09

Mr. M.N. Rao. Adv.

Mr. T.N. Rao, Adv.

Mr. Manjeet Kripal, Adv.

Mr. Ramesh Adv.

Mr. Anshuman, Adv.

IA 63/09 in
CA 1867/06

Mr. M.N. Rao. Adv.

Mr. T.N. Rao, Adv.

Mr. Manjeet Kripal, Adv.

Mr. Ramesh Adv.

Mr. Manish Singhvi, AAG, Raj.

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Mr. K.N. Madhusoodanan, Adv.

Mr. R. Sathish, Adv.

Mr. Tara Chandra Sharma, Adv.

Ms. Neelam Sharma, Adv.

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Mr. Arvind Kumar Tiwary, Adv.
Mr. Ranjan Dwivedi, Adv.
Mr. Radhe Shyam Sharma, Adv.

Mr. Debasis Misra, Adv.

Mr. S. Chandra Shekhar, Adv.

Mr. Amit Kumar, Adv.

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

I.A.No.59:

Learned counsel for the petitioner is not pressing this application. Hence, dismissed as not pressed, without prejudice to the Special Leave Petitions filed by learned counsel for the petitioner.

SLP(C)Nos.28488/2008, 27978/2008, 29248/2008 and SLP(C)...
CC 14852-14854/2008:

De-link and post separately on 28.08.2008.

I.A.No.63 :

This application has been filed by 18 Civil Judges (Junior Division) in the cadre of Andhra Pradesh State Subordinate Judicial Service. They were denied promotion to the cadre of Civil Judge (Senior Division). The main contention urged by the applicants is that all the Civil Judges (Junior Division) who were in the zone of consideration for promotion to the cadre of Civil Judge (Senior Division) were subjected to oral interview and based on the marks secured in the interview, promotions were given and 33 candidates, including the present applicants, were denied promotion. The High Court has filed a counter affidavit/reply stating that they followed the guidelines issued by this Court in Malik Mazhar Sultan & Anr. U.P.P.S.C. & Ors. passed on 4.1.2007. As regards the promotion to the cadre of Civil Judge (Senior Division), in the said judgment, this Court had given a direction under clause (4). It states that for the purpose of filling up vacancies in the cadre of Civil Judge (Senior Division) to be filled by promotion :

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"...Viva voce criteria"

and it was further stated :

- "a) ACR for last five years;
- b) Evaluation of judgments furnished; and
- c) Performance in the oral interview."

Promotion from the cadre of Civil Judge (Junior Division) to Civil Judge (Senior Division) is the first promotion stage in the Subordinate Judicial Service. All these officers must have worked for more than five years in the State Subordinate Service and in some cases they would have got promotion as Civil Judge (Senior Division) only after completion of 10 years of service as Civil Judge (Junior Division). So their performance is evaluated on the basis of their past ACRs and also in case of necessity their judgments can also be perused for the purpose of evaluation. But we do not think that these officers should be subjected to oral interview for the purpose of promotion. Normally promotions are given based on the evaluation of the ACRs and seniority. We do not think that they shall be subjected to oral interview for the purpose of their promotion to Civil Judge (Senior Division). The direction of this Court in the said judgment that for the purpose of promotion, their performance based on oral interview shall also be considered as deleted. If any High Court/State Government has framed any rules pursuant to the direction of this Court, that rule also be treated as deleted.

These 33 candidates who have been denied promotion to Civil Judge (Senior Division) would be at liberty to approach the High Court to seek appropriate relief.

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I.A. is disposed of accordingly. Consequently, Writ Petition (C)No.127/2009 is also disposed of.

I.A.NO.65 & W.P.(C) No.73/2009

In this I.A. and writ petition, the main grievance is that 25% of the direct recruitment is not being complied with. According to these petitioners, the cadre strength of the District and Sessions Judges is 166 including Fast Track Court Judges. Whereas the stand of the High Court that many of the posts are temporary in nature and at any time the tribunals or the special

judges posts likely to be abolished, they are not taken as part of permanent cadre and according to the High Court the total cadre strength of the District Judges is 96 and already there are 24 District Judges. As there is dispute regarding the cadre strength, without prejudice to the rights of the petitioners they may agitate the question before the High Court.

The I.A. and writ petition are disposed of accordingly.

I.A.No.66

The petitioners contend that High Court of Patna is adopting criteria for promotion other than what has been stated in the Malik Mazhar Sultan's case. The petitioners would be at liberty to approach the High Court.

The I.A. is disposed of accordingly.

I.A.Nos.70,71 & 72

Without prejudice to the rights, the I.As. are dismissed as withdrawn.

I.A.No.69

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No orders required.

(G.V. Ramana)
Court Master

(R.K. Dhawan)
Court Master

(Veera Verma)
Court Master